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Banking, Commerce and Insurance Committee  
March 03, 2015

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[LB67 LB223 LB336]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, March 3, 2015, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB67, LB223, and LB336. Senators present: Jim Scheer, Chairperson; Matt Williams, Vice Chairperson; Kathy Campbell; Joni Craighead; Mike Gloor; Sara Howard; Brett Lindstrom; and Paul Schumacher. Senators absent: None.

SENATOR SCHEER: Good afternoon. It is the appointed time. My name is Jim Scheer and I am the Chairman of the Banking, Commerce and Insurance Committee. The committee will take up the bills that...in order as they are posted. Our hearing today is your part of the legislative process; it's your opportunity to express your position on proposed legislation before us today. Committee members will be coming and going and some are not here to start with. They have to be in other committee hearings to introduce bills and will be called away. It's not an indication that your bill is not of interest to us, it's just that's part of our process. To better facilitate today's proceedings, I'd ask you to follow a few of the procedures. If, first, you could please either shut off or turn your cell phones to silent. If you're going to be testifying, if you can move up towards in the front chairs so that we don't have a lot of time going back and forth between testifiers that would be great. The order of the hearings will be the senator will introduce his bill; there will be proponents, opponents, neutral, and then the senator will close. Testifiers, I will ask you to please sign in--there are pink forms back by the doors--if you're going to testify. Please fill that out in its entirety. When you come up to testify, please hand that to Jan, which is to your far right. As well, when you start to testify, the first thing you could do, please, is to spell your name, give us your name and spell both your first and last name so the transcribers have the correct spelling for the official record. If you are wanting to show your interest in the bill but not necessarily testify, there are these white sheets by each door. You can put your name and what bill you're interested in and you are either supportive or opposing that bill and those will be put in the record as well. I would ask you if you are going to testify that you be concise. If you are reiterating something that's already been said, you can abbreviate that because, oddly enough, we will catch it the first or second time through. So if it's past that, we probably have it and you can just say me too, and that will work just fine. If you are testifying, remember that the microphone is picking you up so please speak directly towards the microphone so, again, the transcribers have that. And I would reiterate to the committee members as well to make sure that you are facing and the microphone is towards your direction. If you have written materials that you would like the committee members to have, we will need ten copies of each. If you do not have ten copies, Jake, our page, over to your right, will be glad to make those for you, preferably before you testify so that we have the information while you're there so if we have questions, at least we can ask them of you at that time. Our committee counsel to my right is Bill Marienau and our committee clerk is Jan Foster. And we have a page with us this afternoon, as always, does a great job, is Jake Kawamoto

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from Omaha, over to your far right. And I will have the committee introduce themselves and we'll start with Senator Schumacher.

SENATOR SCHUMACHER: My name is Paul Schumacher representing District 22, that's Platte and parts of Stanton and Colfax County.

SENATOR HOWARD: I'm Senator Sara Howard, I represent District 9 in midtown Omaha.

SENATOR LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

SENATOR WILLIAMS: Matt Williams, District 36, Dawson County, Custer County, and north part of Buffalo County.

SENATOR CAMPBELL: And I'm Kathy Campbell representing District 25, Lincoln.

SENATOR GLOOR: Mike Gloor, District 35, Grand Island.

SENATOR SCHEER: And while Senator Schumacher is taking his position, I did neglect to inform you we do use the light system in the committee. You will have five minutes to testify. The green light will come on and will stay on for four minutes. When the yellow light comes on, that means you have one minute left so you should be trying to tie up your comments. When the red light is put on, that means your five minutes is up. I would expect you to curtail your comments fairly quickly, if not I'll help you to do so. So with the game plan in place, Senator Schumacher, we will have the LB67 hearing. [LB67]

SENATOR SCHUMACHER: Thank you, Chairman Scheer, members of the committee, my name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r; I represent District 22 in the Legislature and I'm here today to introduce LB67. LB67 is deja vu all over again because you saw it last year, those of you that were here, as LB788. And it's back again because it is an unresolved controversy that probably won't go away until somehow or another it is resolved. As we all know, cities, particularly our major cities like Omaha and Lincoln, have the right under Nebraska law to declare bankruptcy. If they didn't have that right under Nebraska law, we probably wouldn't be here today and they zealously defend that right. It's something they feel they have to have. There was even discussions last year whether or not it just simply be taken away from them and resolve some of these issues. They did not particularly acquiesce in that notion. So this brings into a focus something that was learned from the Detroit bankruptcy. Detroit was a big city that went bankrupt and there were a lot of people wanting to eat out of the bankruptcy trough. And the bankruptcy judge was faced with some interesting questions as to how do you divide the pie.

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And two of the big players in the division of the pie...both of them were, basically, people who had invested their pension money in the city. One through bonds, loaning the city money. And those things turned up in all kinds of pension funds and mutual funds and those kind of things where people put their savings. And the other side of the coin was the union-negotiated contracts in which people worked very hard for city and municipality, work a little cheaper in exchange for the promise of a big defined benefit pension and a rather comfortable pension. And so those two interests began to clash. And the bankruptcy judge, and there will be much more specific testimony than what I can deliver, but just as a high overview, the bankruptcy judge basically said--well, in deciding who has priority or if it's share and share alike, I'm going to look at state law and take my hints and my cues from that. If it's clear from state law, it's a resolved issue, then I've got a lot less thinking to do than if it is a muddled, unclear issue and I've got to start raising the equities and got to start trying to figure out what's right and what's wrong and what should have been in state law or what might have been in state law. And so that began to raise concern here in Nebraska as to what if Lincoln and Omaha or anybody else for that matter that has the authorities in municipality decided to declare bankruptcy? Where does it stack up here? And everybody has an opinion. The folks who represent the bondholders think that there's some case law in Nebraska. One particular case was called Hollstein, I don't think there was a cow involved, but must have been a guy named Hollstein involved, that indicates that the bondholders would come first. But it's not a lock and it's not a certainty. And it may very well be that they don't. I've talked with representatives of the union community and they sure hope, in fact, they believe that they may come first, but that's probably more a hope than any case law to support that particular position. But nevertheless, we don't know for sure. It's not clear. And it is a matter of interpretation and when judge starts interpreting whatever the judges interpret, you don't know what the outcome is. And when you don't know what the outcome is, it's not good for anybody. It's not good for anybody relying on a city's credit when they put their money in, their savings in to bonds. It's not good for a union man working when he's hoping he's going to have a good retirement at 8 percent compounded interest year over year to fund that retirement and that may not be in the cards. So what we did, basically, is we, last year, the bill got bogged down; the controversy slowed it all down on the floor and eventually LB788 was gutted and used as a vehicle for some other legislation. But it's back again because the issue is still back again and you'll hear a little bit more about how the Detroit situation bears on this. The issues under LB67, basically, were brought into focus by the introduction of it and a companion bill that was heard in Judiciary Committee, LB66, because last year the argument was made that, look, don't worry about this, there is no chance on earth that we're going to ever use our bankruptcy authority, just don't worry about it. Don't mess with the city's ability to borrow money at cheap interest rates, the bondholders will be taken care of. The union people will continue to make promises too and life will just go on and everything will be pretty good. So to bring it into perspective, filed LB66, very simple little bill. It said whenever a municipality issues a bond on the cover page of the sales document that sells the bond, they're to disclose that this is an unsettled issue in Nebraska. You may be first, you may not be first, but it's a big letter disclosure right in the beginning. And

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the response in opposition from the cities to LB66 was, whoa, that would be too big of a red flag. No, no, no, no, it's potentially very costly. It could drive our interest rates way up. We've got something like this buried in the small print on page 30 of the document and people who really are interested in these things will read that far into it. Certainly you do when you buy a few bonds for your pension fund, right? Well, strong opposition against a disclosure that this is an unsettled issue in Nebraska and weigh it when you weigh the purchase of these bonds, adjust it when you think in terms of what interest you should get in compensation. Needless to say, that bill is in Judiciary Committee and it's still sitting there. And we're over here at bankruptcy talking bankruptcies to the Banking, (Commerce) and Insurance Committee. I don't suspect you will hear the same particular tone of music here as was heard in Judiciary Committee. And what we basically say in this bill is the bondholders, just as they come first, when there is no bankruptcy...dear bankruptcy judge, should this issue ever be before you, let them come first there, because that's our intent. We could have other intents, too. We could divide the pie; we could say that the pensioners come first and the bondholders come second. But this particular bill says the bondholders come first. But we need to let somebody know with certainty what would happen if one of our major cities, or smaller cities, declare bankruptcy. It's better that everybody knows their position now, negotiate for their position now; have that resolved by this body, this committee, and the Legislature now than a great deal of uncertainty and human suffering 10, 15 years from now when, maybe, the bet that, oh, interest rates are going to go up, so let's borrow a bunch of cheap money now and pay it off with depreciated dollars ten years from now, maybe that doesn't happen, and maybe we are in a new economy where interest rates stay low and the edge for borrowing cheap now is no longer there or any other calamity that might befall a city. Or if the pensions don't return, the 8 percent year over year return on investment that we all wish we could get. So it's here. And it is here as a matter of saying, okay, let's post-bankruptcy apply the same rules as we would pre-bankruptcy and put the bondholders first. And if that's not the proper way to do it, then articulate what the committee thinks is a proper way to do it. And with that I'll take any questions and let somebody talk to you who probably knows more than I do. [LB67]

SENATOR SCHEER: Thank you, Senator Schumacher. Any questions? Seeing none, thank you. [LB67]

SENATOR SCHUMACHER: Thank you. [LB67]

SENATOR SCHEER: Now open it to proponents. [LB67]

ROBERT HALLSTROM: (Exhibits 1 and 2) Chairman Scheer, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB67. The spelling of my last name is H-a-l-l-s-t-r-o-m. LB67

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is designed to enhance access to capital markets for governmental units by providing that general obligation bonds, notes, and other financing obligations of governmental units have a lien on bond-pledged revenue sources as defined in the legislation. When looking at this issue and where it came from, we had a number of our NBA-member banks approach us a few years back and they essentially said with everything that's going on in the country with regard to bankruptcies that were either pending or on the horizon in Detroit, Michigan; Harrisburg, Pennsylvania; Central Falls, Rhode Island; Jefferson City, Alabama; and the county, Jefferson County, Alabama; they asked a question--what happens to us as bondholders when we purchase general obligation bonds that are issued by municipalities in the event that a local political subdivision were to file bankruptcy? Senator Schumacher has already indicated that Nebraska law expressly authorizes Chapter 9 bankruptcy filings, that's Chapter 13, Section 402 of Nebraska statutes. And as set forth more vividly in my testimony, Nebraska, we believe, from our research is 1 of 29 states that expressly or implicitly authorize bankruptcy filings by local political subdivisions. But with respect to our research of the Chapter 9 bankruptcy laws, what we found, essentially, is that the bondholders, as you might expect prior to the filing of the bankruptcy, have the full faith and credit taxing authority of the issuing entity backing those bonds. But immediately upon the filing of the bankruptcy, those bondholders are converted to general unsecured creditors, a significant difference immediately before and immediately after the bankruptcy filing. However, there is an exception to that rule and the exception is if the state expressly authorizes a statutory lien authority, as we are proposing under LB67, the bondholders are allowed to maintain a preference or a priority to ensure payment of the bonds. My testimony also reflects that approximately 28 other states have some form of statutory lien protection for bondholders as proposed under LB67. Most recently in 2012, the state of Rhode Island was looking at Central Falls, Rhode Island, on the cusp of bankruptcy and they were looking at what they could do to provide protections going forward. They adopted legislation after which LB67 is principally patterned. And when Central Falls did go into bankruptcy, their law or their statutory lien protection was upheld and did work to provide the intended protection for bondholders. My testimony also talks about, and Senator Schumacher referenced the Hollstein case. That was a case involving a bank and an individual with regard to the issue of whether general S.I.D. warrants for bondholders would be protected or preferenced in the context of an S.I.D. bankruptcy. It was a certified question to the Eighth Circuit Court of Appeals to the Nebraska Supreme Court. And that question was essentially in the event of an S.I.D. bankruptcy would their warrants or general obligation bondholders have preference or priority? As you look through that case and analyzing that, it indicates that there is no expressed statutory lien for S.I.D. bankruptcy purposes. But in analyzing the statutes, the court essentially said when you look at the taxing authority that SIDs have to pay off warrants, it is general and limited. Conversely, when you look at the taxing authority for bondholders in an S.I.D. context, it is unlimited. And so that is the issue that they ultimately rested upon in saying that the bondholders had a preference and LB67 would simply provide that statutory lien protection to bondholders under Nebraska law. I'd also note, somewhat similarly, when we look at our existing tax levy limitations, I think you could possibly make the

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argument that since we have a 50 cent tax levy limit in place for general obligations, not general obligation bonds, but general obligations, that perhaps similarly to Hollstein, there is limited taxing authority for general obligations of cities while there is, seemingly, unlimited authority to pay off bondholders because they are expressly excluded from the levy limitations. However, to make that crystal clear, we believe that LB67 is necessary and appropriate. With regard to the background, it's kind of interesting when we look at this we initially had deferred bringing legislation on this matter thinking that since the municipalities, in our humble opinion, are the prime beneficiaries of the legislation that, perhaps, they ought to bring it. Not only did they not bring it, but we're probably going to see them opposing it this afternoon if they're in a position that they were last year. But as Senator Schumacher alluded to, they basically had two arguments last year. The first one was: we don't ever intend to file bankruptcy. Well, I think you can understand if they never file bankruptcy, this legislation will never harm them because that's the only time that it kicks in. So it won't have one iota's difference from their perspective. And secondly, they suggested that they had yet to see an adverse impact on their market rates. I would preface that by saying "yet." I think it's inevitable and logical that with the bankruptcies that we see across the country, that at some point the marketplace is going to adjust; the bondholders are going to get skittish whether they're institutional bondholders like banks and insurance companies or even individual bondholders. And as a result, the taxpayers will ultimately pay because the cost of borrowing through bond issues becomes higher. Also, I think it sets us up for a double whammy for the taxpayers. Currently, if the cities, if you take them at their word and they don't file bankruptcy, those huge unfunded defined benefit pension plan obligations are going to be paid by the taxpayers as sure as we're sitting here over time. Secondly, if the impact that we're concerned about does occur and the market rates go up because of what's happening across the country, then we will probably also see the cost of bonds increase and taxpayers ultimately pay for those as well. I'd be happy to address any questions the committee may have. [LB67]

SENATOR SCHEER: Any questions? Senator Williams. [LB67]

SENATOR WILLIAMS: Thank you, Senator Scheer. Mr. Hallstrom, thank you for being here. One quick question of clarification. I just want to be sure I understood your testimony. There are 29, I think you said, states that have already addressed this issue. [LB67]

ROBERT HALLSTROM: Yeah, there's about the same number of states that have bankruptcies and the same number of states that have statutory lien protection in one form or another. The Central Falls or the Rhode Island approach, being the most recent, is the one that we worked with bond counsel in putting together two... [LB67]

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SENATOR WILLIAMS: Right. But in...how many of those do they create a statutory lien for the bondholders? [LB67]

ROBERT HALLSTROM: There's approximately 29 states that have some form of statutory lien protection. [LB67]

SENATOR WILLIAMS: Thank you. [LB67]

ROBERT HALLSTROM: And I can't go down state by state, but it probably is intuitive that if you don't have the bankruptcy option, as Senator Schumacher suggested, you don't need the statutory lien and the numbers work out pretty closely with 50 states that if 30 have bankruptcy, approximately 20 may not have any need for a statutory lien, although I think there are some states that have some element of both. [LB67]

SENATOR WILLIAMS: Okay. Thank you. [LB67]

SENATOR SCHEER: Mr. Hallstrom, have any cities, municipalities sold bonds in the last year? [LB67]

ROBERT HALLSTROM: Certainly. [LB67]

SENATOR SCHEER: Omaha or Lincoln, the large ones that we're sort of focusing on? [LB67]

ROBERT HALLSTROM: I would presume so, yes. [LB67]

SENATOR SCHEER: Did they have difficulty selling them? Because I guess my...I'm thinking this was brought to the Legislature last year, as I recall, so there's some knowledge that there's ambiguity so was there any problem with the issuance that you're aware of as far as... [LB67]

ROBERT HALLSTROM: Not that I'm aware of, Senator. We met with the city of Omaha over the summer and I think they were sticking to their guns and suggesting that they're not seeing an increase in the market rates that have shown up since that time. [LB67]

SENATOR SCHEER: And if a municipality in any state that (a) that has the requirement that the bonds are...remain in first place in a bankruptcy, state in which that is not the case, with all things equal, you know, the ratings of the two communities that are selling the bonds, would the

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bonds with the community that have the first position go out at a less cost than those that would not? [LB67]

ROBERT HALLSTROM: Senator, I think it would probably be anecdotal for me to try to address something in a blanket type of statement. I did read in the aftermath of the Central Falls bankruptcy, when they finally worked their way out of the bankruptcy, the bondholders were protected because of the new law. My understanding from reading articles that where the bond rating agencies were upgrading the Central Falls...or the bond issuances in the state of Rhode Island by virtue of that law having been passed. That's logical; it's intuitive to me, but I can't tie other than that example of having read that to say that bond-rating agencies are going through systematically and suggesting that the existence of a statutory lien has an X-percent factored difference. But I would suspect over time those things are going to work their way into the marketplace. [LB67]

SENATOR SCHEER: Well, I guess what I'm wondering, this puts, the way I'm looking at it, puts any bond that is out there right now in that position. And those that bought a bond regardless if it was in Norfolk or Scottsbluff or Omaha or Lincoln or Beatrice, if they bought those bonds 12 years ago, they really didn't have that assurance as far as the bond purchase was concerned. That's a value. So would it make more sense if we're placing a value on that to do that from whatever point forward because those that purchased them before didn't have such guarantee and those bonds are already valued, they're already sold, so to a certain extent they're in place? Now, by not doing that, you may hinder the value of that bond that's out there if you give value to the new ones, but I'm just wondering... [LB67]

ROBERT HALLSTROM: Well, Senator, and Mr. Schenken, who I think is going to testify in a neutral capacity that's with the bond counsel firm that provided great assistance from a technical standpoint in putting this together, may be able to better address that question. But my understanding is that we have put everybody on the same playing field with respect to how this law applies to avoid any potential legal challenges to how the laws applicability to existing versus bonds going forward. [LB67]

SENATOR SCHEER: Okay. Thank you. Any other questions? Thank you, Mr. Hallstrom. [LB67]

ROBERT HALLSTROM: Thank you. [LB67]

SENATOR SCHEER: Next proponent. Seeing none, I would entertain opponents to LB67. And again, those that are testifying, if you could move your way towards the front if you're going to be testifying, that would be helpful. Good afternoon. [LB67]

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PAUL KRATZ: Good afternoon. My name is Paul Kratz, K-r-a-t-z. I'm the city attorney for the city of Omaha. Obviously, what you have here before you is a preference for banks if a bankruptcy ever occurs. The banks would be paid in full in such a situation. The problem is, I guess the philosophical question before this committee is--is that the right thing to do? Because as you've seen in Detroit, you have bondholders and then you have the pensioners. And it's up to the bankruptcy judge, at least in their case, to decide how the pot of money should be split. And I suggest to you that it ought to be left up to the bankruptcy judge as to make that decision and it not ought to be given one side preference over the other side. Keep in mind that banks, when they buy bonds, when they invest in bonds, they get paid an interest rate. That interest rate includes an element of risk. On the other hand, the pensioners, the city employees, the city government itself do not have that luxury. Pensioners working and city employees usually work for less in the market value; they count very much on their pensions. And it seems fundamentally unfair to have a situation where the banks will get all of their money back, get paid 100 percent, while the pensioners won't. To me that's just a very significant issue. And it's inequitable, frankly. I would like to mention also, this idea of placing a lien on city revenues is really a new concept in this state. Nobody can place a lien on city property. But here the bill is suggesting that a certain group of people ought to be able to have a lien on city revenues and to the exclusion of others. And again, I'm not sure that's a good philosophical position. I did want to mention quickly, there's some discussion about ratings. I've been with the city for 17 years. I usually participate in at least two discussions with rating agencies over that period of time. And never have agencies ever mentioned the issue of bankruptcy and whether or not there should be a preference to the banks. That has simply been a nonissue in my experience. And we've never been advised, frankly, by our bond counsel that that is an issue that we should address. It hasn't affected our interest rates. We'll have a speaker after me that can discuss that a little bit more. Finally, I'd just like to mention, I think it's fair to have not only the institutional investors that buy bonds, and also the employees, and the city itself, on equal footing and if there is a bankruptcy to allow the bankruptcy judge to decide how the money should be divided. And I thank you.

[LB67]

SENATOR SCHEER: Questions? Senator Williams. [LB67]

SENATOR WILLIAMS: Sorry, Senator Scheer, I have to ask a question here. Thank you, Mr. Kratz. Your statement that government employees or city employees generally work for less. [LB67]

PAUL KRATZ: Yes, sir. [LB67]

SENATOR WILLIAMS: This week, many of us as state senators heard a report by Ernie Goss, who is certainly a resident of Omaha... [LB67]

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PAUL KRATZ: I know him very well. [LB67]

SENATOR WILLIAMS: ...that that is simply not the case anymore. But that was, historically, the case, but that has changed and this was in a whole argument or discussion that we were having about private industry doing things versus having government do things. So any comment that you would have? [LB67]

PAUL KRATZ: Sure, it's more from a practical standpoint in that I certainly know from the lawyer standpoint their salaries in my department versus the private sector. Same with the secretaries, and the same with a number of individuals. In fact, we have a lot of engineers, frankly, that have come and worked for the city for a few years and then go straight to the private sector making substantially more money. We have a hard time keeping engineers because of that. I haven't seen Ernie Goss's report, but from a practical experience, that's my thoughts. [LB67]

SENATOR WILLIAMS: Okay. And just so that I understand where the pension people are, this is a 8 percent defined benefit plan? [LB67]

PAUL KRATZ: We have a defined benefit plan, which by the way is changed...has changed for some people, it's a defined benefit plan, depends on the number of years that you're employed. Up until this year, it has been two and a quarter percent for each year...two and a quarter percent of your salary for each year that you're employed. For the civilians, that has now been changed to one and three-quarters percent going forward. I will tell you though that again the 8 percent is over the last...and our next speaker will have that, over the last, maybe, 30 years, we've averaged nine and a half percent on our investments. [LB67]

SENATOR WILLIAMS: Okay. And the last question, because I'm one that sits on Judiciary Committee also, so I was present when Senator Schumacher presented LB66. And the testimony there was that the city of Omaha testified that they would not want to disclose more on their prospectuses because they thought that would hurt the bond rating and increase the cost of the bonds. [LB67]

PAUL KRATZ: Let me clear that up. The testimony there was...let me back up...first of all, we disclose everything we can and as much as we can and we do that on purpose. Because if we don't, guys like me, our finance director, and our politicians are liable if there are any misstatements. So we go to a great length to make sure we get everything accurate. That bill required that that statement be put on the first page of the prospectus. Okay, there's a lot of information already required on that prospectus. It's standard information that every investor knows what to look at. And if this language was in there, it would stick out, it would raise a red flag; because there's a red flag, it's possible that the people that buy the bonds would just pass on

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this issue and go to some other issue. Keep in mind, we're competing with cities throughout the country. And each week, each day there are a whole lot of issues out there that we need to compete with. So the testimony there was--this would change that cover page and create an issue. I think that was the problem. [LB67]

SENATOR WILLIAMS: Are we splitting hairs then that if we would pass LB67 we would make it clear to those bondholders what the priority is? [LB67]

PAUL KRATZ: I would suggest if you pass LB67, it ought to be put somewhere in the prospectus, not on the front page. The front page was the issue. [LB67]

SENATOR WILLIAMS: Okay. Thank you. [LB67]

SENATOR SCHEER: Listening to Senator Schumacher, you said that you don't believe that the bondholder should have preferential position in a bankruptcy. But based on his testimony, really has to be one or the other. This one gives banks or bond owners that position. So it would be your position that the employees and their retirement benefit packages have first position? Would that be fair then? [LB67]

PAUL KRATZ: Let me answer that in two ways. Number one, I think it should be left up to the bankruptcy judge and not dictated by state law. Bankruptcy judge will look at the facts, look at the revenues coming in, and make a decision based on a number of factors. Then secondly, remember, as I said earlier, that the bondholders are making money off their investment and they will continue to make money, I guess, up until the point of bankruptcy and even thereafter. Employees do not, they simply work; they put money into their pension and they expect that pension at the end of their work life. [LB67]

SENATOR SCHEER: Okay. Then is a fairer treatment then for both the retirement programs and the bondholders to share first position rather than have to choose one or the other? [LB67]

PAUL KRATZ: Well, I think the best approach is simply to leave it up to the bankruptcy judge because there's going to be too many factors, too many issues involved to try to predetermine who ought to get the first bite of the pie. [LB67]

SENATOR SCHEER: Okay. Thank you, Mr. Kratz, appreciate it. [LB67]

PAUL KRATZ: Thank you. [LB67]

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SENATOR SCHEER: Next opponent. [LB67]

STEPHEN CURTISS: Good afternoon, Senators. My name is Steve Curtiss and I'm the finance director for the city of Omaha. Curtiss is spelled C-u-r-t-i-s-s. The city of Omaha has approximately \$1.3 billion in bond principal including GO bonds, revenue, redevelopment, and lease purchase bonds. Those bonds fund much of the infrastructure and long-term capital project needs for the city. It includes funding for large items such as fire equipment, sewers, roads, parking garages, public venues, parks, and police equipment. The average useful lives on these items is at least 20 years. The city maintains a debt service levy and monitors its debt service payment to make sure that there are sufficient funds to meet our debt service obligations each year. The city sells bonds in the open market about every 12 months. Many times these are sales of \$100 million or more. One of the key components to marketing our bonds is getting a bond rating. The city generally gets a rating from both Standard and Poor's and Moody's. These ratings are the key factor, or one of the key factors, in the risk-reward analysis performed by our buyers which are predominantly large Wall Street banks, large insurance companies, and other out-of-state financial institutions, foundations, and trusts. Our current bond rating is a AA. And that's one below the top rating of AAA and our underwriters and our bond rating agencies have both let us know that the one item that keeps us from being still AAA is the fact that we have pension obligations and other employee health care obligations. Incidentally, we've made a lot of moves in the last year or so to correct both of those and have made a lot of progress. But those are the only things that are keeping us from being at the top rating, currently, which will be the one determining factor that our buyers will look at. So as I've mentioned before, Omaha's debt is purchased exclusively, or almost exclusively by large Wall Street banks, large financial institutions, and other out-of-state trusts and pensions and those sort of things. The city request that you not advance the bill which would give priority to Wall Street banks and large out-of-state insurance companies. We ask that you not put firms like Goldman Sachs or Prudential ahead of the common citizens and pensioners of the city of Omaha. And with that I'd take questions. [LB67]

SENATOR SCHEER: Questions? Senator Lindstrom. [LB67]

SENATOR LINDSTROM: I'm curious on the hierarchy of the bonds. If the bond rating is currently at AA, if they were to jump ahead of, say, the pensions, wouldn't that give them priority which would cause their rate to increase because they're higher than the pension? [LB67]

STEPHEN CURTISS: No, nothing will change our...according to what we've been told, nothing will change our rating. And I may have misunderstood your question. Nothing will change our rating except for our pension liability going away and our long-term health care obligations, which we have kind of a fundamental disagreement because we pay those as we go. And so I

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don't know that we'll ever be able to actually fix that one because it's not been our city's philosophy. [LB67]

SENATOR SCHEER: In relation to your rating, your AA rating, was it a positive, neutral, or a negative outlook? [LB67]

STEPHEN CURTISS: It was a positive outlook, the last one we just got, if I recall correctly. [LB67]

SENATOR SCHEER: Okay. [LB67]

STEPHEN CURTISS: Or, I'm sorry, stable, I believe was the word they used. [LB67]

SENATOR SCHEER: Okay, stable or neutral. Okay. Any other questions? Thank you, Mr. Curtiss. [LB67]

STEPHEN CURTISS: Thanks. [LB67]

SENATOR SCHEER: Next opponent. [LB67]

RODNEY VLCEK: (Exhibit 6) Good afternoon, Chairman Scheer, members of the Banking, Commerce, and Insurance Committee. My name is Rodney Vlcek, spelled R-o-d-n-e-y V-l-c-e-k, and I'm president, secretary/treasurer of the Nebraska State AFL-CIO. And we are testifying in opposition to LB67. I believe you have a letter from our attorneys of Dowd, Dowd, Howard, and Corrigan...John Corrigan which will explain our position on that. I wanted to comment on that, but Mr. Kratz actually took some of my testimony, so I'm not going to reiterate it. But we just feel that in a situation if a bankruptcy would arise that everybody should take a hit. And we don't feel that the bondholders, as of Wall Street, taking over (inaudible) should be a way to direct (inaudible) judge presiding over that. I'd be happy to take any question if you have any. [LB67]

SENATOR SCHEER: Any questions? Don't see any. Thank you, Mr. Vlcek. [LB67]

RODNEY VLCEK: Thank you. [LB67]

SENATOR SCHEER: Other opponents. Good afternoon. [LB67]

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GARY KRUMLAND: (Exhibit 3) Senator Scheer, members of the committee, my name is Gary Krumland, it's K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. And also appearing today for the city of Lincoln. What's being handed out is a letter from the city of Lincoln from the finance director there with concerns about the bill, and they asked that I hand this to the committee. The league's executive board voted to oppose LB788 last year and continue the opposition this year. The concern, I guess, could be based on...even though cities, basically outside of Lincoln and Omaha, issue bonds and use bonds to finance projects; they're not rated like Lincoln and Omaha's are. But there is concern that in a bankruptcy without knowing why a city went into bankruptcy, without knowing all the circumstances, it's hard right now to determine what the priority should be. A city in bankruptcy would have to continue providing services. And if all of the revenue of the city is taken for certain priorities and other things, it may make it more difficult for the city to continue and to work it out. So I think the board's position would be is it would be best to wait and see what the circumstances are; work with the bankruptcy judge and interested parties and work out how best to be fair to everybody at the time of the bankruptcy. I'd be happy to answer any questions. [LB67]

SENATOR SCHEER: Senator Williams. [LB67]

SENATOR WILLIAMS: Thank you, Senator Scheer. Thank you for bringing up the point of the reasons for bankruptcy. I wanted to just ask you the question about when you think about the possible reasons that a city like Lincoln or Omaha could go into bankruptcy, are there any of those reasons that would be attributed to the bondholders? [LB67]

GARY KRUMLAND: I don't know. I guess I don't...the city, as you probably heard, as far as I know, no city in Nebraska has ever gone into bankruptcy. So it's hard for me to say why they would. I know that... [LB67]

SENATOR WILLIAMS: My point is that the bondholders are the lender to the city that didn't create any of the management decisions or any of the circumstances that could have caused the bankruptcy. They are the one party involved with this that would not be involved with that. Do you agree with that? [LB67]

GARY KRUMLAND: Well, I don't...they probably were not involved; I don't know if they...would say that they were the one party, I don't know that. For example, I think...I don't have the information. I know a school district, a few years ago, was looking at possibly going into bankruptcy because of a bus accident that caused a lot of damage. That was not a management decision or anything else. [LB67]

SENATOR WILLIAMS: Right. [LB67]

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GARY KRUMLAND: The bondholders, clearly, wouldn't have had a say in that, but it was something outside or a natural disaster. [LB67]

SENATOR WILLIAMS: I just was asking the question though about if there's any way that a bondholder could actually contribute to the circumstances that would cause a bankruptcy. I can't think of one. [LB67]

GARY KRUMLAND: No, I can't think of any either. [LB67]

SENATOR WILLIAMS: Thank you. [LB67]

SENATOR SCHEER: Any other questions? Thank you, Mr. Krumland. Any other opponents to LB67? Seeing none, are there any in a neutral capacity for LB67? Good afternoon. [LB67]

PARKER SCHENKEN: Good afternoon, Senator Scheer, members of the committee. My name is Parker Schenken, that's P-a-r-k-e-r and then S-c-h-e-n-k-e-n. I'm a partner with the Baird Holm law firm in Omaha. I've been with the firm for over 20 years and head up the firm's public finance practice group. I'm here as a public finance practitioner testifying in a neutral capacity about LB67. My testimony follows testimony on similar bill LB788 which was introduced last year for which my colleague, Richard Pedersen, also testified in a neutral capacity. The neutral status of my testimony is driven by a couple of things. First, as a large law firm, we represent clients with varying views on the policy decision represented by LB67. And more importantly, from my perspective as a bond practitioner being the one who writes the legal opinions supporting the bonds and also sometimes works on disclosure relating to the bonds, without addressing any of the public policy matters, again clarity and predictability, however we get there, are the ultimate goals. You've heard in earlier testimony that LB67 amends the existing Nebraska Governmental Unit Security Interest Act to address the relative priorities of so called GO bonds, general obligation bonds, and other creditors of a political subdivision. The rights of the holders of revenue bonds, which are bonds payable from a stream of revenues from municipal enterprise, are already addressed by the existing act. LB67, among other things, is a modification of existing law intended to address the rights of various types of tax-backed bonds. LB67 and others like it through the country is driven by a perceived shift in the expectations of the municipal bond markets as it relates to general obligation bonds. A tax-backed general obligations bonds historically have been viewed as one of the safest credit risks in the market. However, recent developments that you've heard about today, many of the municipal bankruptcies under Chapter 9, have (inaudible) called that position into question. So under Nebraska law, the authority of political subdivisions to issue bonds is governed by literally dozens of specific statutory provisions, many of which are unique to a specific political subdivision or a particular type of bond issue. In general, there are really three categories:

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revenue bonds, limited tax bonds, and unlimited tax bonds. In a bankruptcy of a political subdivision under Chapter 9, should it happen, the treatment of the various types of bondholders will differ depending on the type of bond that they hold. Like in other bankruptcy cases, a Chapter 9 case imposes what's called a automatic stay basically meaning that as a general matter the creditors may not take actions to collect or enforce debts without permission from the court. But section 9-22(d) of the bankruptcy code limits the applicability of the automatic stay and provides that the automatic stay does not operate to stay the application of what's called pledged special revenues to payment of indebtedness secured by those revenues. And that definition includes not only revenue enterprise type revenues, but also taxes specifically levied to finance one or more projects or system, but excludes general taxes levied to finance the general purposes of the debtor. So LB67 under state law then would create a specific category of item that can be pledged referred to in the act as "bond pledged revenue sources" which now, among other things, includes taxes levied to pay bonds. And it states that the pledge of any bond is valid and binding and deemed continuously perfected from the time the bonds are issued. LB67 is intended to create a structure under state law which results in aligning the future tax revenue streams which were pledged to pay these bonds with the definition of pledged special revenues under Chapter 9. Again, my goal here today is to testify as a practitioner and to highlight the interaction between state law and the bankruptcy code. I don't intend to comment on the public policy behind the decisions that you all will make. But it should be noted, and it bears on some of the other testimony that for a plan to be approved under Chapter 9, a plan must, among other things, be feasible. And if we turn to the Detroit bankruptcy case, Judge Steven Rhodes accepted the following test for feasibility in the context of a Chapter 9 basically asking whether the city, after confirmation of the plan of adjustment, will be able to sustainably provide basic municipal services to the citizens of the city and to meet the obligations contemplated in the plan without the significant probability of a default. So the overarching feasibility requirement of Chapter 9 can impact all creditors, particularly in the negotiations that almost certainly accompany a Chapter 9 proceeding. With that I...oh, and Senator Scheer, I think, had questioned the old bonds versus new, and that was deferred to me, and so I'll do my best. Again, it's anecdotal, I'm not an investment banker and so I don't have the direct rating or investment banking experience. But in my experience, the expectation of the municipal bond market, historically, has been that these bonds did have the status that the law is trying to give them today. And it's only recently in the context of these larger municipal bankruptcies that that status has started to get questioned. So I think the person that bought their bond 12 years ago, to use your example, probably did have the expectation that they had this status. That's anecdotal and speculative, but the best I can do. So with that I'd be happy to take questions and I appreciate your time. [LB67]

SENATOR SCHEER: Any questions? You are here...well, just a minute, you're here in a neutral position so... [LB67]

PARKER SCHENKEN: Correct. [LB67]

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SENATOR SCHEER: ...and you have expertise in this area. You write opinions as far as the bond values and so forth. Is it imperative that the Legislature do something to correct the current situation? [LB67]

PARKER SCHENKEN: "Imperative" is a difficult word. I mean, you've heard testimony earlier... [LB67]

SENATOR SCHEER: Okay, well, let me then say is it necessary that the Legislature do something to correct the current situation? [LB67]

PARKER SCHENKEN: I believe it would make my job easier in describing the...again to my role, it would make my job easier in describing the credit priorities of the various bondholders, either in an opinion that talks about the enforceability and, you know, parity of those obligations or in a disclosure document. Imperative in terms of credit markets and other things is something that I'd have to ask you to rely on other testimony about. The best I can do. [LB67]

SENATOR SCHEER: Okay. Thank you. [LB67]

PARKER SCHENKEN: Okay, thank you. [LB67]

SENATOR SCHEER: Seeing nothing else, thank you very much. [LB67]

PARKER SCHENKEN: Thank you, Senator. [LB67]

SENATOR SCHEER: (Exhibits 4, 5, 6, and 7) Any other neutral testifiers? While Senator Schumacher comes back up, I'd like to note the City of Lincoln in opposition. We have a letter from the Cornhusker Bank in support of LB67; letter from Nebraska Professional Firefighters Association, and the Professional Firefighters Association of Omaha, and from the AFL-CIO, all three of those in opposition to LB67. Senator Schumacher. [LB67]

SENATOR SCHUMACHER: Thank you, Senator Scheer, members of the committee, it must be comforting to bondholders to know that if there's a problem it will be up to the bankruptcy judge under the existing situation to decide whether or not they get paid with no particular guidance from anybody, but just what happens to feel right at the time from the bankruptcy judge. Put that disclosure on the front of LB66 and it will bring all kinds of notice. The good thing about this bill is that right now there's no crisis. A whole lot easier to decide something when there is no crisis. The interest rates aren't beginning to move up because these uncertainties are not yet on the level of consciousness that causes them to move up in the heads of bondholders, but they

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will. The bondholders aren't facing an immediate bankruptcy. And incidentally, the bondholders, you can say they're New York Wall Street banks, but really they are small banks; they are individual investors; they are small mutual funds. And even if they are Goldman Sachs, they are funds that are then secure ties and sold off to maybe your pension fund and your average saver. This is the classic situation of two reasonably innocent parties, the bondholders and then you do have the city workers who, you know, they want to be promised a nice retirement and the city wants to make that promise available to them as it wants to borrow money cheap. So the city is caught between a rock and a hard place. And maybe it would be best to just let them alone, except for the simple reality, I think, that we all think may very well happen if there is a major problem in this state, guess where they're going to come. Guess who is going to be too big to fail? Too big of a union population to turn your back on; too big of a bond situation to let the city go under and ruin its credit, they're going to be down here. And it will be a whole lot easier for whoever the poor souls down here are to come up with an answer when they're met with that request if we can say, look, back in 2015, we laid out the rules. And you knew what those rules were. And they were clear and they were concise and you know what share of the pie you're going to get. So don't cry too hard to us right now because we made clear rules. A lot different situation than them coming down here in the year 2030 and saying, you know, we thought our pensions were perfectly secure. We thought so. You know, we thought the bonds we were buying were good. Nobody really spelled it out for us in clear and concise language that it would just be up to the bankruptcy judge. We're in a fortunate situation that we can take some action here. Whatever the committee believes is a proper set of rules to lay down, the avenues are open in this bill. And it's probably easier to deal with the situation now than then and probably wiser to do so. Take any questions. [LB67]

SENATOR SCHEER: Just one, Senator, if...bear in mind, I realize the bankers are representing not only their association, but via their association, their corporate holding from bank's situation, but there has to be other institutional investors that have lots of dollars invested in either the city of Omaha or the city of Lincoln or some other municipality. Where are they? [LB67]

SENATOR SCHUMACHER: Probably on the other side of that camera. [LB67]

SENATOR SCHEER: They're not here. [LB67]

SENATOR SCHUMACHER: They're not here because I think they realize that the Nebraska Bankers Association is articulating this issue. And I think they also realize that we've had this issue and it's basically going to be up to the committee to decide whether or not we should act on it. The issues are clearly before the committee at this point. And the parties are clearly before...you have the bondholders represented here; you had some of the unions here; you had the cities who want to be able to borrow here. And so the issues are here and they're ripe for

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discussion. I'm not sure if Goldman Sachs would have flown somebody out from New York whether they could have added anything to the discussion. [LB67]

SENATOR SCHEER: Well, I don't know, but they would have made their comments known that there was a concern on the part of institutional bankers or institutional fund managers or retirement programs. [LB67]

SENATOR SCHUMACHER: They'll reflect that concern in bond ratings as these things develop over the country. And they may not be concerned today... [LB67]

SENATOR SCHEER: Fair enough, fair enough, but Omaha's bond rating hasn't substantially changed? [LB67]

SENATOR SCHUMACHER: And... [LB67]

SENATOR SCHEER: Or...and I guess we've not had somebody from Lincoln here, excuse me for interrupting, so I don't know...I'm not familiar enough with Lincoln's, but, you know, that doesn't...you know, and usually bond underwriters are looking at a longer term complexion than simply just the last 12 months or the next 12 months. They're more forward thought than that. So I mean, evidently there's not huge yellow lights going off somewhere, at least within the state of Nebraska. [LB67]

SENATOR SCHUMACHER: And that's a good thing. And that's why it's good to address these issues now. [LB67]

SENATOR SCHEER: Okay. Thank you, Senator Schumacher. [LB67]

SENATOR SCHUMACHER: Thank you. [LB67]

SENATOR SCHEER: (Exhibit 8) And that will end the hearing on LB67. And per our agenda, we will now move to LB223, Senator Harr. You know how to clear a place. [LB67]

SENATOR HARR: (Exhibit 1) Chairman Scheer, members of the Banking, Commerce and Insurance Committee, my name is Burke Harr, H-a-r-r. I am from Legislative District 8 located in midtown Omaha and I am here on LB223, the Insured Homeowners Protection Act. Each year, communities in Nebraska are impacted by a natural catastrophe such as floods, tornadoes, or hailstorms. When that happens, property can be severely damaged and local residential

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contractors are unable to keep up with all the repairs that are needed in the community. When this takes place, a new catastrophe can take place: fraud by unscrupulous contractors who prey on distressed homeowners. LB223 attempts to discourage these practices from taking place by making several changes to Nebraska's Insured Homeowners Protection Act. First, the bill defines catastrophe as...in the act as a natural occurrence including fire, earthquake, tornado, windstorm, flood, or hailstorm which damages or destroys real estate. It also utilizes this definition to amend state statute 44-8603 in order to make changes to cancellation provisions for residential contractors. The bill also restricts a residential contractor from advertising that they will rebate any portion of an insured deductible as an inducement to the sale of goods or services or to provide compensation to a consumer who places a sign or advertising for the residential contract on their premises. Third, LB223 requires a residential contractor who contracts with a consumer to repair damage resulting from catastrophic...from a catastrophe to provide the consumer with a full, complete notice of contract obligation and rights. The statement would...the statement to be included in the notice is found on page 4 of the bill and is basically a means to provide additional information to the consumer regarding their rights when working with residential contractors. Finally, section 6 of the bill states that a contract entered into with a residential contract is void if the residential contractor violates provisions of the Insured Homeowners Protection Act. I believe I've also handed out an amendment that would add additional language to the bill that probably should have been in the bill originally. And if not I can get it for you. The amendment would add a new section that generally prohibits a residential contractor from representing or negotiating or offering or advertising to do so on behalf of a consumer in an insurance claim related to the repair of a residential real estate. Do you have it? You have one? Could I ask the pages to make more copies, please? And that last one is...this amendment is...I've personally been involved with litigation regarding that. By adopting LB223, I believe we can take a step forward in reducing fraud by unscrupulous contractors. I will not stop...it will not stop all contractors from preying on distressed property owners, but it will give the property owners additional rights and protections. With that, I would ask for your support on LB223 and entertain any questions you may have. [LB223]

SENATOR SCHEER: Senator Craighead. [LB223]

SENATOR CRAIGHEAD: Thank you, Mr. Chairman. Hi, Senator Harr. Thank you for being here today. Are you bringing this bill to us on behalf of someone or a group? [LB223]

SENATOR HARR: Good question. The answer is, yes and no. As I started to say, I had a case where I was personally involved in some litigation and it just didn't seem fair, what was going on. And I talked to some other attorneys and they said, yeah, you know, the homeowners insured...the Insured Homeowners Protection Act, we left out a certain section that other states have. And so I brought that on behalf of the organizations. [LB223]

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SENATOR CRAIGHEAD: Okay. So is it mainly the trial attorneys? [LB223]

SENATOR HARR: There will be others coming up after me, yes. [LB223]

SENATOR CRAIGHEAD: Okay. Thank you. [LB223]

SENATOR SCHEER: Senator Harr... [LB223]

SENATOR HARR: Yes. [LB223]

SENATOR SCHEER: ...couple comments: You prohibit, essentially, the proverbial advertisement in the front yard in lieu of some type of reduction or payment... [LB223]

SENATOR HARR: Yes. [LB223]

SENATOR SCHEER: ...by a contractor. How does that harm the homeowner? [LB223]

SENATOR HARR: Well, it harms all homeowners because what ends up happening is, the person will make a...generally, your home has a deductible on it. Let's say it's \$1,000. So it costs \$7,000 to redo my roof. A contractor will come in. You'll have a number of them. And generally you're now required to get three. Sometimes you are, sometimes you aren't. But some will come in with an \$8,000 bid. You have a right to pick who you want. And they'll say...the job costs \$7,000. They'll say, hey, tell you what, let's do it for \$8,000. You put a sign in your yard and I'll give you your \$1,000 back. So what happens is, all the other consumers end up paying and the rates increase. [LB223]

SENATOR SCHEER: So this isn't a homeowners protection, this is a consumer protection act. [LB223]

SENATOR HARR: Well, no, the homeowner is protected because you keep the rates down for all the homeowners. That single homeowner comes out ahead... [LB223]

SENATOR SCHEER: Well, that... [LB223]

SENATOR HARR: ...but what happens if you...if the job really costs \$7,000, you charge \$8,000, give the \$1,000 back to the homeowner, contractor still has their \$7,000, the insurance company

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is out that extra \$1,000 and that generally is going to come out of your rates down the road. All the homeowners pay for that that have policies with that insurance company. [LB223]

SENATOR SCHEER: That may be, but there's no harm to that individual homeowner. [LB223]

SENATOR HARR: Well, I think we had mandate day yesterday in here and this is...you know, it's similar to whoever is on the receiving end of that mandate, hey, they're great, but it raises the rates for everybody else. And so we have to decide, at what point do we want to spread the risk across so that one person is coming out ahead. [LB223]

SENATOR SCHEER: Then, assuming you have three bids, they're all for \$7,000, and there is no inducement; but you know, if I do a nice job, I'd like to put a sign in your front yard, this prohibits it. [LB223]

SENATOR HARR: Then they're on equal footing. It depends on which contractor you like the best, which one has a good reputation, all the other factors. But what doesn't come into factor is the monetary factor. But what we want to do is avoid that. We want to keep the cost of replacement as low as possible so home insurance...the public policy is we want to homeowners' policies as low as possible so that those...everyone can afford it. [LB223]

SENATOR SCHEER: So essentially, I guess, then this is more of an insurance company bill rather than a homeowners bill because what we're really doing is making sure that the insurance companies aren't billed...paying the extra \$1,000 at the time of the service rather than the individual homeowner. [LB223]

SENATOR HARR: What we're trying to do is to make sure that when I sign up for insurance, I say I, insurance company, am buying a policy from you. And I will buy that at a certain rate. Okay? And it says the replacement of the roof is based...and the insurance company says, well, taking in norms, averages, everything, you...probably going to cost \$7,000 to replace your roof. So you have a choice on your premium. If you're going to want a \$0 deductible, you can pay through the nose through a policy...for the policy. We want to have ways to discourage frivolous claims so what we do is we set of claim of...or a deductible of \$1,000, \$2,000, \$5,000, similar to what we do with car insurance. So now you have \$1,000 and your rate is based on the fact that you will...it's all actuarial tables, right? So it's based on the fact that you will pay the first \$1,000 and they will pay the remainder. Well, now you got this guy come in who's changed the dynamics. Instead of charging \$7,000, they're charging \$8,000, and they're giving you a wink and a nod and giving you your \$1,000 back. So the whole basis of this relationship between the homeowner and the insurance company has changed. [LB223]

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SENATOR SCHEER: Well, couldn't you consider it a paid endorsement? [LB223]

SENATOR HARR: What's that? [LB223]

SENATOR SCHEER: Can't you consider that a paid endorsement? [LB223]

SENATOR HARR: But you're not paying them. You're taking them the \$1,000 back or you're saying you're not going to collect it. Instead, why don't you have a separate contract? [LB223]

SENATOR SCHEER: Well, but I guess I'm just...I'm looking at the other avenues to simply go around what you're doing. And so if I literally paid the contractor \$8,000, the insurance company is going to reimburse me the \$7,000, there's nothing to say that I can't become a paid endorsement for that individual company. But I don't think... [LB223]

SENATOR HARR: That's fair if that were worth \$1,000. [LB223]

SENATOR SCHEER: Pardon? [LB223]

SENATOR HARR: That would be fair if it was worth \$1,000. But it isn't. It's a way of getting the deductible back to the homeowner to induce them to go with that person. [LB223]

SENATOR SCHEER: I understand, but under your...under this, that still would be available. [LB223]

SENATOR HARR: Yeah. [LB223]

SENATOR SCHEER: So we haven't closed the loophole. We just have to be more inventive of how to go about it. [LB223]

SENATOR HARR: Well, the idea is, the more unscrupulous it looks, the more it smells, the more a homeowner is going to wonder, probably shouldn't be doing this. I mean, and in essence you're getting close to... [LB223]

SENATOR SCHEER: Well, I'm going to tell you, that's probably not what they're thinking. They're probably thinking there's some way that I don't have to...I'm going to be real honest... [LB223]

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SENATOR HARR: Yeah. [LB223]

SENATOR SCHEER: ...they're thinking, how do I get out of paying the \$1,000 deductible?  
[LB223]

SENATOR HARR: Yeah. [LB223]

SENATOR SCHEER: I mean, look, I'm being honest with you because it is part of my industry as well. But that's...you know, when somebody gives them an opportunity that they can rationalize as being somewhat okay, chances are they may be able to do that. And so that's all I'm getting at... [LB223]

SENATOR HARR: Yeah. [LB223]

SENATOR SCHEER: ...is I'm afraid that we're setting up obstacles, you set those obstacles up and then we just simply are going to circumvent them by another manner by whatever roads.  
[LB223]

SENATOR HARR: Well, yeah, the further you push it out, the closer you get to insurance fraud. And I think that's going to raise some people's flags. The answer is, are there going to be people who work the system? You name a system and I'll name you someone who is trying to work it. I mean, that's just the nature of the world we live in. So we're not ever going to write 100 percent perfect law. I mean, even if we write...it's perfect today, tomorrow it may not be. What we're trying to do here is find ways to improve on what we've already done so that those who do what's right are rewarded and those who do what they're not supposed to do are more difficult. I like to find ways to encourage people to do the right thing and make it difficult to do the wrong thing, is what I tell my children. [LB223]

SENATOR SCHEER: Fair enough. Senator Craighead. [LB223]

SENATOR CRAIGHEAD: Thank you, Mr. Chairman. Senator Harr, I see another precedent coming here with this. If a contractor is not allowed to put a sign in a yard, then what happens to people such as realtors and real estate brokers who also enter into an agreement with the client? To me, I see it as setting up a precedent where we could say, no, now we can't do this because in this law we said, well, you can't advertise via sign. [LB223]

SENATOR HARR: Yeah, and I don't know how...I don't see this affecting real estate agents. I do see it affecting roofers. I mean, if you're a roofer and you're doing...if you're under this situation,

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yeah, it could affect them. But what we want to do, our ultimate goal, is to discourage fraud. And our ultimate goal is to keep homeowner property rates low and affordable. If that means someone can't have a sign...I mean, I can work with that portion of it. I mean, I have a lot...there's more portions to this bill. We can work with that. But at the end of the day, I don't see a problem with the public policy of...you know, I don't think...you can put a sign, you just can't be compensated for it. And there's nothing wrong with that. [LB223]

SENATOR CRAIGHEAD: Okay. [LB223]

SENATOR SCHEER: Senator Harr, how do we protect those then that wouldn't be related to a catastrophic event? And I guess I'm looking at...could be a roof, could be siding, could be windows, a multitude of home improvements to where... [LB223]

SENATOR HARR: Yeah. [LB223]

SENATOR SCHEER: ...the salesman essentially is doing the same thing. He says, gosh, it's going to cost \$8,000 to do windows in your home but, golly gee, you know, I can knock \$1,000 off if you just put my sign out in the front yard so all your neighbors know you bought your windows from me. Well, really, we're doing the same thing, I mean, but it's at...certainly at their expense, maybe not the insurance carrier's expense, but we still have the same bait and switch, you might say, going on. [LB223]

SENATOR HARR: And that's a great example. And in that case, I probably wouldn't have a problem. What we're trying to work...what we worry about is two part: fly by night who don't really care about the homeowner and then also, you know, there is some concern that the homeowner...that when it's not their money or their money is taken out of it, they aren't as concerned about the cost. And so we want to keep their...there's a tension that you have to keep in there so that each side has, you know, the overused cliché, skin in the game. And if I'm paying for it out of my own pocket, I already have the skin in the game. And if they...the...whoever that is that repairs the...the window repair person wants to give me something for the yard, that's a little different. I think that's okay. Now, if you want to give that...we can amend this so that if there's any type of deduction for signs in the yard, those go back to the insurance carrier, I don't think, you know, that's a problem either. But when I buy an insurance policy, I agree to pay a deductible to have my house repaired. That's the contract I've entered into with my insurance company in good faith and hopefully my insurance company has entered into with me in good faith so that when there is a catastrophe, they'll pay and they'll pay timely. But if there's a rampant fraud, you know what? It may affect how quickly they pay me either directly because they're worried about me committing fraud or because there's so many cases of fraud that it

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slows down getting to the legitimate ones. And so what we're trying to do here is to avoid a lot of fraud. [LB223]

SENATOR SCHEER: Fair enough. Any other questions? Senator Williams. [LB223]

SENATOR WILLIAMS: Senator Scheer, thank you. Senator Harr, just to go back where you started with point one on this whole thing, would you describe to me again so I fully understand it why...it's ahead of the definition of catastrophe to include a list of items there on...that's on page 2, line 8. [LB223]

SENATOR HARR: Yeah, through 10. [LB223]

SENATOR WILLIAMS: Tell me again why we need that in here. Are we having a problem with...in a practical sense out in the world right now? [LB223]

SENATOR HARR: And that's a great question and there's someone following after me that can answer that question better. [LB223]

SENATOR WILLIAMS: Okay. Thank you. [LB223]

SENATOR SCHEER: Thank you, Senator Harr. [LB223]

SENATOR HARR: Thank you very much. [LB223]

SENATOR SCHEER: You're up next. I'm assuming you're staying, so. [LB223]

SENATOR HARR: Yes. (Laugh) [LB223]

SENATOR SCHEER: First proponent. Good afternoon. [LB223]

MICHAEL GIBBONS: (Exhibit 2) Good afternoon, Senators. My name is Michael Gibbons, G-i-b-b-o-n-s. I'm here before you today as a citizen and practicing attorney from the state of Nebraska. I'd like to thank the committee for allowing me to speak in support of LB223. As an attorney, I've had the unique perspective of defending both homeowners and insurance companies against lawsuits filed by contractors relating to repairs brought about by storm catastrophes. The intent of LB223 and in particular the amendment, which I think you all have now before you today which is what I'll focus my comments on, as I see it is to close a loophole

that currently exists in Nebraska's Insured Homeowners Protection Act. More specifically, the act as currently written allows a contractor to hold a homeowner's insurance claim hostage for its own financial gain. Although the majority of contractors who work on homes across the state of Nebraska are honest, hardworking men and women, there is a strong minority of contractors who take advantage of homeowners and their insurance companies by gaming the system through the loophole that exists in the current law. As you know, in the days that follow a weather catastrophe, contractors from inside and outside the state of Nebraska converge upon the damaged area with the intent of signing up as many potential customers as possible. The less desirable contractors often engage in what can best be described as a form of bait and switch. The homeowners are approached by the contractor sales agent who presents an initial estimate for repair used to entice the homeowners into signing a contract along with an assignment of the claim. The assignment is buried among a pile of documents given to the homeowners. The homeowners are told next to nothing about its legal effect, but are assured by the contractors that it's all being done in the normal course. The truth is, however, an assignment is anything but normal and what the homeowners don't know about these assignments can and does hurt them. By signing such a document, they unwittingly give up any and all rights to their own insurance claim. The contractor becomes the sole owner of the insurance claim and all benefits to coverage associated therewith. This occurs the moment the homeowner signs the assignment. Once in control of the claim via the assignment, the contractor submits a different bid to the insurance company. In some cases it's double, triple, or even more than the original bid that was submitted. The contractor claims right to payment directly even in cases where work has not been yet performed, leaving the homeowner helpless to do anything but hope that the work gets done in a timely and workmanlike manner. If the homeowner ends up at odds with the contractor over the work, they can't instruct the insurer to hold back the payment because they don't own the claim anymore. It's been assigned to the contractor. The end result is a homeowner with little or no control over the repairs to their own home and an insurer who is left in the middle to try and figure out whether they can pay the contractor with the addition of the homeowner's name on the check or whether they have to send it directly to the contractor and let the homeowner hang in the wind. Although the current form of the Insured Homeowners Protection Act provides some relief for a homeowner such as the right to cancel a written contract within three days, the right to be reimbursed for any deposits made prior to cancellation, there's nothing in the current act which allows a means to cancel an assignment and nothing in the act that prevents a contractor from taking control of the claim in its entirety. Likewise, Nebraska Revised Statute Section 44-2614 prohibits any person from advertising him- or herself as someone that gives advice or services with regard to insurable risks without being licensed. But contractors can sidestep that license requirement by taking an assignment because once they are assigned the claim, they are no longer providing advice or counsel to the homeowner regarding the insurance claim. Rather, they are technical owners of the claim, free to negotiate and handle the claim as their own. LB223 shores up the Insured Homeowners Protection Act and (section) 44-2614 by providing specific language that prohibits a contractor from taking an assignment of an insurance claim

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from the homeowner and otherwise negotiating an insurance claim on behalf of the homeowner. Such a prohibition is a vital part of protecting the homeowners against unscrupulous contractors. [LB223]

SENATOR SCHEER: Senator Craighead. [LB223]

SENATOR CRAIGHEAD: Thank you, Mr. Chairman. Hi, Mr. Gibbons. Thanks for being here today. [LB223]

MICHAEL GIBBONS: Hi, Senator. [LB223]

SENATOR CRAIGHEAD: What type of law do you practice? [LB223]

MICHAEL GIBBONS: I practice defense law, primarily defending homeowners and... [LB223]

SENATOR CRAIGHEAD: So you're a trial attorney. [LB223]

MICHAEL GIBBONS: I am, yes. [LB223]

SENATOR CRAIGHEAD: Okay. Thank you. Okay. If I'm reading this correct--and correct me if I'm wrong--what I am hearing in this is that what this bill says is that people are not smart enough to research companies and they can't possibly deal with their issues on their own. Am I hearing that right? [LB223]

MICHAEL GIBBONS: Well, I would disagree with that conclusion. I think what this bill is doing is protecting homeowners who, in a state of need and desperation after a storm ravages the area and they're left trying to make a quick decision to get their home repaired, are bombarded by contractors that come into their area who hand them a pile of papers and say, the quicker you sign these, the quicker I can do the work. And people don't have the time to...and frankly some of them not the expertise to understand exactly what they're signing in those two or three minutes. In fact, it's been my experience representing these folks that in most cases they're not even left with a copy of it to investigate what they've signed. In a perfect world, you're right, everybody would be well informed and do their research on the contractors. But in reality and in practice, that's not the way it works. That's been my experience. [LB223]

SENATOR CRAIGHEAD: So we have to protect people from themselves is what you're saying. [LB223]

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MICHAEL GIBBONS: I don't think it's protecting them from themselves. It's protecting them from contractors that come in and, through a means of bait and switch, take advantage of the homeowner and at the same time the insurance company. We're talking about a company that comes in and hands the homeowner an estimate that is for a certain dollar amount. And you look at that estimate and you think, this is perfect, this is exactly what I'm looking for. It seems reasonable to me. I'll sign everything. And once that claim is assigned to that contractor, they turn around and submit an estimate to the insurance company that's two, three, four, in some cases I've seen ten times the amount of the original estimate. So it's not a matter of protecting them against themselves. It's protecting them against a bait and switch that occurs. And once that occurs, they have no control over it because the assignment gives the claim now over to the contractor and they're in complete control. They no longer have to communicate with the homeowner about it. They no longer have to tell them or show them the estimate or anything else that they turn over the insurance company; and when they get paid, the insurance company has to pay them directly. [LB223]

SENATOR CRAIGHEAD: Okay. [LB223]

SENATOR SCHEER: And, Mr. Gibbons, just to clarify and that's fine, but it sounds like your testimony is more exclusively to that of the assignment process portion of this bill, more exclusively to the broader bill itself. [LB223]

MICHAEL GIBBONS: My experience and the reason I'm here is because I've been involved in cases that have primarily revolved not just around assignments, but the other part of that amendment relates to contractors negotiating on behalf of a homeowner which, frankly, is prohibited by other statutes, but this is one of the means that they do that. I did hear the conversation earlier about the deductible and the reimbursement. I think that's already part of the current Insured Homeowners Protection Act. Frankly, if you look at the current state of the law, there is a statute that prohibits the deductible from being reimbursed. So I don't know that that's even part of this. But, you know, I'm happy to answer any other questions. [LB223]

SENATOR SCHEER: I'm pretty sure it is but...that's fair enough. But I just wanted to clarify that you are speaking more exclusively to the assignment portion of the loss than any of the claims and are...the method as far as advertising and signage and that type of stuff. [LB223]

MICHAEL GIBBONS: That's correct, Senator. [LB223]

SENATOR SCHEER: Okay. Thank you very much. [LB223]

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MICHAEL GIBBONS: Thank you. [LB223]

SENATOR SCHEER: Next proponent. Good afternoon. [LB223]

ANN PARR: (Exhibit 3) Good afternoon. [LB223]

SENATOR SCHEER: I see you have your glasses out right away. [LB223]

ANN PARR: It's a week later. I think we've reached the tipping point. I'm just that much older. (Laugh) Yes, I've got them handy. My name is Ann Parr. I am senior vice president, secretary, and general counsel at Farmers Mutual of Nebraska, an insurance company... [LB223]

SENATOR SCHEER: Excuse me, could you spell your name, please? [LB223]

ANN PARR: Oh, I'm sorry. A-n-n P-a-r-r. [LB223]

SENATOR SCHEER: Thank you. [LB223]

ANN PARR: I'm with Farmers Mutual Insurance Company of Nebraska headquartered here in Lincoln. I am also serving as the president of the Nebraska Insurance Information Service which is a state trade organization comprised of property casualty insurers doing business in the state of Nebraska. Our member companies write the majority of homeowners insurance in the state of Nebraska and we support LB223. I am heeding your caution about reiterating things that previous speakers have said so I will try to shorten up my testimony today. Mr. Gibbons in particular has done a good job of explaining the types of problems that this bill addresses that we, as the insurance industry, are most concerned about. I understand there are issues about the yard signs and so forth, but I'll be honest with you, that's the least of our problems today. I'm going to confine most of my remarks to the assignment issue as well because that is the biggest issue facing us, and I think that's where the biggest hole in our current law exists. I also just want to point out that this is not an insurance company bill per se. We didn't bring this bill. We didn't ask that this bill be brought. But it is something that we're very much in favor of because it's a problem that we have seen over the years. It's been extremely magnified in this past year. As many of you probably know, 2014 was a record-setting year for claims, unprecedented number of wind and hail claims across the state. All of our companies that do business statewide will tell you that they haven't ever seen anything like it. My point in saying that is that some of these problems that kind of lurk beneath the surface really tend to be magnified when you have a year like this where there are a lot of people with claims and a lot of people that need help repairing their homes right away and a lot of contractors moving into the area to try to fill that need. When

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a hailstorm moves into the area, then the roofers move in right after it. And I don't...I underscore that because I don't mean to disparage at all the many, many fine, ethical contractors that do business in this state that we have a great working relationship with and really do a good job for the homeowners and for the insurance companies. There is, unfortunately, something to be said about the bad apples spoiling it for the rest of everybody and that's the problem that I want to address today. Briefly, what happens is, the homeowners are overwhelmed. They've got a damaged home that needs to be fixed. They're not really sure where to turn and a contractor shows up and says, sign this form. That authorizes me to do the work. I think I can do it for \$10,000. You sign here, I will deal with the insurance company. You don't have to think about this again. To the homeowner, that sounds like a great solution. Where do I sign? What's the problem? The problem happens when the homeowner signs that work authorization, he may also be signing away all of his rights and benefits under the insurance contract. I have attached with a copy of my written testimony some samples of some of the agreements that insureds sign. Those were actually sent to me by the insurance department, but believe me, we see plenty of those in our files as well. It kind of gives you a flavor for what kind of forms the homeowner might be signing. And they really do seem innocuous on the surface. The homeowner often doesn't understand that what he may have done is completely sign away his rights under his insurance policy. He doesn't quite understand the implications of this. When the homeowner signs over all the rights and benefits in regards to a claim, that homeowner is completely removed from the transaction which involves the repair of his home. The contractor is now dealing directly with the insurance company. The homeowner is cut completely out of that loop. And as a result, several things can happen if the contractor is not...is unscrupulous. For one thing, the estimate can go up. The contractor tells the homeowner, I think I can do your roof for \$10,000, sign here. Once we now have the homeowner out of the loop, the contractor is free to send out whatever bid he wants to the insurance company who he is now dealing directly with. Oftentimes, in fact most times, if you're dealing with a contractor that's not quite on the up and up, that estimate is greatly inflated from the \$10,000 he showed the homeowner. The insurance company now has to negotiate directly with that contractor about the work that needs to be done and what is a fair price for that work. All of this extra negotiating may hold up the completion of the work because the contractor may not agree to start the project until there's been an agreed-on price. The homeowner has no idea that the estimate that has been given to the insurance company is twice the estimate that he was shown or that the contractor might be claiming additional items that now need to be repaired. All the homeowner knows is that his house isn't getting fixed and he can't do anything about it. He has no leverage because he's out of this transaction now. He has no right to insist that the contractor get started on the work. He has no right to say, forget it, I'm going to use somebody else because I'm tired of waiting for you. He has no rights to do that anymore. We get a lot of phone calls from frustrated insureds who don't understand what the holdup is or why this is happening. Eventually, of course, when the insurance company negotiates with the contractor, we almost always come to some sort of agreement on the price. But because a compromise always involves some concessions by both sides, the odds are good that the price is going to be

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higher than we had originally estimated. All of this comes at an increased price in our claims adjusting as well. Because we go back and forth with the contractors in these situations, we have a lot more people in the field trying to handle these. Our claims manager told me today that in many of these cases, our adjusters are going back five, six, seven or more times to reinspect the property with the contractor in hopes of seeking some sort of resolution with them about what needs to be done. As you can imagine, all of that increased cost eventually adds up. We have the increased cost because the claims are selling for a higher amount than they probably should and we have increased cost of claims handling. Eventually, especially when it's widespread on a magnitude like we saw this year, the insurance companies' increased costs have to get passed along to someone and that's where you start seeing higher rates, rate increases. We call them rate adjustments, but they're hardly ever rate adjustments down. They're premium increases. With LB223 in place, we could still communicate with our insureds. We can certainly work with the contractors. They can give us their opinion and so forth, but the right to ultimately determine how that claim is handled remains where it should be which is between the insurance company and its policyholder. Made it before the red light, didn't think I was going to. (Laugh) [LB223]

SENATOR SCHEER: I think we were a little generous. (Laugh) [LB223]

ANN PARR: Okay. It seemed to take a while, but... [LB223]

SENATOR SCHEER: Senator Craighead and then Senator Gloor. [LB223]

SENATOR CRAIGHEAD: Thank you, Mr. Chairman. Hi, Ms. Parr. Thanks for being here. So if I'm hearing you correctly in your testimony, what you're saying is that this bill will save insurance companies time and money. [LB223]

ANN PARR: Yes, and in particular the amendment to the bill, AM590 that you have, I think, is the really important part, yes. [LB223]

SENATOR CRAIGHEAD: Is there anything, when people get their policies that's basically like a buyer beware piece of paper that says, you know, with their policy, beware of unscrupulous contractors? Do you know what I'm talking about? [LB223]

ANN PARR: There's nothing in the insurance policy, no. [LB223]

SENATOR CRAIGHEAD: Okay. [LB223]

ANN PARR: Yeah. [LB223]

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SENATOR CRAIGHEAD: Is that something that might help? [LB223]

ANN PARR: You know, we rely a lot...I know in our company we rely a lot on our agents to get the word out to people and they do a pretty good job. But sometimes when you see a summer like we did this year, I mean, those, you know, the contractors and roofers are there same day and they are walking up and down the block and getting people to sign before we've really had a chance to get that word out. So education is part of our mission, yes. [LB223]

SENATOR CRAIGHEAD: Thank you. [LB223]

SENATOR SCHEER: Senator Gloor. [LB223]

SENATOR GLOOR: Thank you, Chairman Scheer. And I do appreciate copies of the documents that get signed because you're listening and reading; but when you look at some of the verbiage that's included in there, it goes from a difference of opinion, perhaps, and reads like a scam. I mean, I'm being pretty blunt. [LB223]

ANN PARR: Yeah, absolutely. [LB223]

SENATOR GLOOR: You are requested to provide...InsuranceBusters.net doesn't sound to me like a company that I would define as doing anything other than trying to paint a picture of themselves of going after the insurance company. [LB223]

ANN PARR: Yeah. [LB223]

SENATOR GLOOR: All information pertaining to this claim including policy, claim check, and all pertinent information...the insured authorizes and directs the insurer to include the name of whatever the person is who is out chumming for this in addition to the insured's name on all drafts or checks pertaining to this claim. And I wonder, is our experience with this...has the insurance companies' experience with this been that these aren't even the contractors? These are contract employees that go out running around with these and trying to get them signed? [LB223]

ANN PARR: Yeah, we see the problem arise in different scenarios. Sometimes it is directly roofers and repair contractors that are doing this. Sometimes it is more of these types of organizations that come in and offer to help guide the insured through the claims process. So, yeah, it's a...it can look like a lot of different things but, yes. [LB223]

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SENATOR GLOOR: Okay. Thank you. [LB223]

SENATOR SCHEER: Senator Williams and then Senator Schumacher. [LB223]

SENATOR WILLIAMS: Thank you, Senator Scheer. Ms. Parr, thank you for being here. And I think all of us would like to protect against the scam. At the same time, I want to ask the question that you raised at the beginning that the majority of the contractors out there are doing good work, want to get paid, and we don't want to get in the way of that. [LB223]

ANN PARR: Yeah. [LB223]

SENATOR WILLIAMS: And I'm assuming when I say they want to get paid, there are times that the good contractor wants to have some protection that when he does this \$10,000, \$15,000 worth of work on this roof that they are going to get paid. Do you see in Farmers Mutual's, you know, documents that are better? I want to be sure that what we're looking at here doesn't preclude the legitimate contractor from securing a position so he gets paid. [LB223]

ANN PARR: Yeah. I agree with you. I've heard that concern raised and I don't think anything there precludes that relationship with the contractor. You know, now when you're talking about the nitty-gritty of claims handling it kind of gets outside of my area of expertise. But my understanding is that, you know, most of these contractors aren't going to start doing the work anyway until they know who is paying the bill and they want to make sure that it's a fair price so that they do get paid completely. So there's usually an agreement in place between the insured and the insurance company and the contractor before the work even gets started about what the parameters of that work is going to be and what it's going to cost. So, you know, and this bill doesn't do anything to change that, how that would come down at all. It also doesn't do anything to preclude the insurance company adjuster and the roofer from working together to decide really what work needs to be done and so forth. All it does is stop the practice of the contractor standing in the shoes of the policyholder because that is not fair to the policyholder and it tends to lead to bad results. [LB223]

SENATOR WILLIAMS: Thank you. [LB223]

SENATOR SCHEER: Senator Schumacher. [LB223]

SENATOR SCHUMACHER: Thank you for your testimony. Thank you, Senator Scheer. Looking at one of the documents that you gave to us, it says it certifies that blank, licensed

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public adjuster...I don't know I've seen that term before. Do we have such an animal in Nebraska? [LB223]

ANN PARR: In Nebraska, and I'm going off the top of my head, but what we have is licensed public adjusters have to fall within the insurance consultant statute in Nebraska. And it sets out in the insurance consultant statute that it also includes public adjusters. Public adjusters have either been licensed here in Nebraska by going through a series of tests or they can come in from out of state if we've got some sort of reciprocity agreement with that state. For instance, we get InsuranceBusters.net, some public adjusters from the state of Texas will come here because we've got a reciprocity agreement with them. So as long as they're licensed there, they can come here. What... [LB223]

SENATOR SCHUMACHER: In these papers, and for example it says...in the second one where it says Licensed Public Adjusters--maybe just as well say Joe's Bookkeeping Service--and their representatives are hereby retained to advise and assist in the adjustment of an insurance claim... [LB223]

ANN PARR: Right. [LB223]

SENATOR SCHUMACHER: Could anybody...do you need to be a licensed to be Joe's Bookkeeping Service? [LB223]

ANN PARR: If you're going to be representing a policyholder in a claim situation, you do have to be licensed as an insurance consultant in Nebraska or as a public adjuster. This is a little bit different situation than the roofers. As I say, we see this kind of play out in different situations. In the case where the roofer takes an assignment, they can circumvent that public adjusting requirement because they're not acting on behalf of the insured anymore. They're not trying to guide the insured through the process. They are standing in the shoes of the insured and I think that's one work-around for them so they don't have to get licensed. [LB223]

SENATOR SCHUMACHER: But this particular is... [LB223]

ANN PARR: But in that particular one, yes, that's what they do. [LB223]

SENATOR SCHUMACHER: ...it says they will assist, that they are all just assignees. So what I'm...you know, I mean, if somebody had asked me how to get around this, I'd say, well, you walk around with two folders, one for Joe's Bookkeeping Service, LLC, in which you offer to...in which you take an assignment and offer to assist them with the processing of the checks,

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and the other folder is Hammer and Saw LLC in which you offer to do the work. And in that case, the Hammer and Saw, LLC, is the one that is repairing or replacing the roof and fits the definition of residential contractor and he hasn't taken an assignment. He's being good. And Joe's Bookkeeping is the one that's doing the naughty. And this doesn't stop that. [LB223]

ANN PARR: Well, I hope you haven't given anyone some bad ideas. (Laughter) [LB223]

SENATOR SCHUMACHER: Well, I think the...if that's the object of the game then we need to do some work on the language. [LB223]

ANN PARR: There is always another way. There is no doubt about that. I've lived long enough to see that. [LB223]

SENATOR SCHUMACHER: Thank you. [LB223]

ANN PARR: This is a good step forward anyway. [LB223]

SENATOR SCHEER: Other questions? And Ms. Parr, just really the signs in the yard and that kind of stuff, that's a peripheral issue. Really, the assignment is the big deal here. Is that...am I reading you correctly? [LB223]

ANN PARR: It's all good but if we had, yes, one thing that we wished would... [LB223]

SENATOR SCHEER: If you got your druthers, this is what you want? [LB223]

ANN PARR: ...yeah, yeah, absolutely. [LB223]

SENATOR SCHEER: Okay. Thank you very much. [LB223]

ANN PARR: All right. Thank you. [LB223]

TAD FRAIZER: Good afternoon, Vice Chair Williams and members of the committee. My name is Tad, T-a-d, Fraizer, F-r-a-i-z-e-r, local counsel and lobbyist for the American Insurance Association, a national trade association of property and casualty firms, appearing in support of LB223. As Ms. Parr indicated, we weren't involved in bringing the bill. We were pleasantly surprised when we found it in the hopper. And I think the previous witnesses have pretty well covered the high points of the bill and the important aspects of it. So we would simply say we

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support the general concept of the bill; and if there are a few tweaks on signage or other matters that make the bill more palatable to the committee, we could certainly live with that. But we definitely support the thrust of the bill. We supported the original Insured Homeowners Protection Act a few years ago when Senator McCoy brought it, and we think this is a good idea and would hope the committee looks favorably on it. And I would try to answer any questions that you might have. [LB223]

SENATOR WILLIAMS: Thank you, Mr. Fraizer. Questions? Senator Schumacher. [LB223]

SENATOR SCHUMACHER: Thank you, Senator Williams. Thank you for your testimony. What if we simply said, no assignment would be effective against an insurance company without the insurance company independently verifying it with the insured? [LB223]

TAD FRAIZER: That might go that direction. I mean, I think the assignment, as Ms. Parr noted, is one of the key aspects of the bills. Again, since we hadn't seen it up front, we weren't involved in the drafting, but the disclosure aspect of it might also be a wise provision to continue in the bill as well. [LB223]

SENATOR SCHUMACHER: Okay. Thank you. [LB223]

SENATOR WILLIAMS: Other questions? Thanks for pointing out that Senator Harr does have some pleasant surprises. (Laughter) We look forward to those. Other proponents? Seeing none coming forward, are there any opponents? Anyone here to testify in neutral? If not, Senator Harr, would you like to close? [LB223]

SENATOR HARR: Yes, just quickly, thank you. And I'll stay in the chair, too. So this bill came to me because of an issue. You know, you always say if you're going to introduce legislation, you have to have a need. Well, I didn't do a very good job of that. This came to me because I had a client who needed his roof repaired and it was \$5,000. And he...the insurance company...or the roofer came to him and said, you know--and this kind of goes...I wish Senator Craighead was here to hear this--those darn insurance companies, don't trust those SOBs. You know what they're going to do? They're going to nickel and dime you to death and they're going to...you're not going to get as good a roof. Trust me. I'm going to do it for you. I'm going to get you your top grade. You know what, if you need to replace a board behind there, I'll fight with the insurance company. I'll be your defender in the corner because I know the industry. This is my bailiwick. You know, you get your roof repaired maybe every 10, 15 years. This is what we do for a living. Trust us. So the guy trusts him, signs...signed the assignment. What was a \$5,000 roofing job turned into a \$12,000 roofing job. And my client didn't like the job either, by the way. And so he says, whoa, whoa, whoa, he talks to the insurance company: Now this is \$12,000

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and I don't even really like the job you did? And they said, well, you know what, you assigned it over. And then he found out that they sold it to a third party that asked for \$18,000. And he said, that's it. I want out of the assignment. Give it back to me. So guess what he did. He got it back. The insurance company...or the roofer was very generous and gave it back to him and said, oh, by the way, insurance is going to pay \$7,000. You owe us another \$5,000. And he's sitting there wondering, well, I took the assignment back, I wish I'd talked to someone beforehand. The answer is, do you think he's not smart? No. It's just, again, this is an area he doesn't know. And so he was taken advantage of once with the assignment and then he was taken advantage of a second time when they gave the assignment back. And now he's liable because the work was done and now there's a mechanic's lien. To answer your question, Senator Williams, it's...they put a mechanic's lien on the house. So this guy now owes this roofer whose job he doesn't like \$5,000 because of assignment. You know, that's what we're dealing with here. That's the real world. Are there...majority of them good? You betcha. Heck, we worked with one or one who used to do this area of work. But, you know, when a storm comes, those fly-by-nights take advantage of you. Are you not smart enough? No. We're not doing this because they aren't smart enough. We're doing it to protect them because this isn't an area of knowledge for them. And they're often in a vulnerable state. Their house has a hole in the ceiling. They want somebody today. Tell me where to sign. I just want it done. I don't care what it costs, I just want it done. And they assign it over. That's what this bill is about. You know, this...as you heard, this wasn't brought by the industry. And, you know, when you don't bring it by the industry, you sometimes run into problems. And I took this largely...this came from Iowa law. And, Senator Schumacher, thank you for introducing a loophole. You know, I'll work with you guys on this. I'll work with the committee on this because I really do feel passionately about this. You know, there are bills we introduce that, again, we introduce for others. This is something that's personal where I've seen real-world effect, where this has hurt people in the real world. The assignment is another way to get around that licensure requirement, just as you talked about. So we need to work on that because what normally would require license to do this, because it's been assigned, that gets rid of that requirement. So, yeah, this assignment is being used and exploited by people who are unscrupulous. And so we need to find a way to close that loophole. That's why I had this bill. I'd appreciate your support and any questions you may have. [LB223]

SENATOR WILLIAMS: (Exhibit 4) Before we ask for any questions, we do have a letter from the city of Omaha in support of LB223 that is in the record now. [LB223]

SENATOR HARR: Thank you. [LB223]

SENATOR SCHEER: I just...Senator Campbell. [LB223]

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SENATOR CAMPBELL: Thank you, Senator Scheer. Senator Harr, was your client also...did he put a sign in his front yard? I mean, is that how...we're going back to Senator Scheer. [LB223]

SENATOR HARR: You know, that part I don't know. I don't know if he did or not. I hope he didn't, but I have no idea. That's not where that came from. Again, this was from looking at Iowa law and just trying to cut and paste. And sometimes when you cut and paste you don't...I don't always do the best job. But I'll be willing to work with the committee on this. [LB223]

SENATOR CAMPBELL: Thanks. [LB223]

SENATOR SCHEER: Anything else? Thank you, Senator Harr. And that will close LB223. [LB223]

SENATOR HARR: Thank you. [LB223]

SENATOR SCHEER: And if people would like, we will go ahead and go with LB336 and be done for the afternoon. Senator Harr. [LB336]

SENATOR HARR: Chairman Scheer, members of the Banking, Commerce, and Insurance Committee, my name is Burke Harr, H-a-r-r, and I am from Legislative District 8. I am here on LB336, changes to the Nebraska Condominium Act. LB336 addresses changes to the Condominium Act. It would leave in place the unanimous requirement as it pertains to creating or increasing special declarant rights and sets a 67 percent standard which may be increased by terms of declaration for all amendments to the declaration which require votes. It would also leave in place the 80 percent vote requirement for termination which is an amendment I have and require the consent of the owner of the affected unit for any changes of unit boundaries, allocated interests, or uses to which the unit is restricted. Amending a condominium regime may be done for a variety of reasons. Some amendments are anticipated by developers and allowed to be made unilaterally by the developer through the exercise of special declarant rights reserved to the declarant. Other amendments may be done by the association without a vote including those required in the event of taking by eminent domain upon expiration of a lease which decreases the number of units, relocation of boundaries, and reallocation of interests between adjoining units upon the owner's request and if permitted by the declarant's subdivision of a unit into two or more units. Certain amendments may be made by units' owners without a vote and without consent of the association including reallocation of limited common elements between/among units to which there are allocations in the declaration. At the least, three different statutory voting thresholds are required for various other types of amendments. Eighty percent of the votes in the associations are required to terminate a condominium. Likewise, 80 percent of the vote in the association including the 80 percent of the vote allocated to the units not owned by the

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declarant are required to sell or mortgage any portion of the common elements. Sixty-seven percent of the votes in the association are required to amend the declarant other than sections set forth above for amendment of the declarant, the association with no vote required, or unit owners with no vote required. What we're looking at here, folks, and I could go on, is--and if you have time for questions I could ask--I think I shouldn't sell the technicality of the bill. Instead I'm going to sell the policy behind the bill. And what you have here is, we're running into situations where times change. And the original reason a condo was built changes. And what we're trying to do is to make it...when a condominium is developed, we all understand what is...what we want. And you know what you're buying into. But as time passes, things change and, you know, what may have been popular 30 years ago isn't anymore. There's a condo development that my parents have where they have a bowling alley in there. No one uses it. They need to get rid of it. But it requires, you know, could require 100 percent of the tenants to pull that out of there. And all you need is one bowler and they're upset. We're trying to do something where it lowers the threshold so that we can make updates and make condominiums...continue to make them attractive so that they aren't being held hostage by one or two tenants, so that they can continue to grow, thrive, and be successful. If there is something that directly affects the property of that individual, then it requires their consent. That stays in here. But what we're trying to do is to amend it so that it still takes the vast majority of the members, two-thirds, to approve; but that it doesn't hold the whole condominium hostage, and therefore, ruin the property value of everybody. With that, I'd be willing to entertain any questions you may have. [LB336]

SENATOR SCHEER: Senator Campbell. [LB336]

SENATOR CAMPBELL: Thank you, Senator Scheer. Senator Harr, is this the exact same bill we had last year? Are there any differences? [LB336]

SENATOR HARR: You know, yeah, and it's very, very similar. There will be a couple of changes. Mr. Hunzeker is coming in after me and I have them. I can tell you, he reread it and I made some mistakes, but yes, basically, yes. [LB336]

SENATOR CAMPBELL: Okay. And we advanced this to the floor last year, but then at the end of the session it just died because it didn't have a priority and...is that right? [LB336]

SENATOR HARR: Time, that's my understanding, yes. [LB336]

SENATOR CAMPBELL: Was it on General File? [LB336]

SENATOR HARR: Yes. [LB336]

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SENATOR CAMPBELL: Okay. We were trying...I was asking Senator Gloor who has a better memory than I do. Thank you. [LB336]

SENATOR SCHEER: Questions? Senator Schumacher. [LB336]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you, Senator Harr. So what is it that can be done now or can be done under this bill with 67 percent of the vote that used to require 80 percent? What is the...would amount to 13 percent of the votes giving up? [LB336]

SENATOR HARR: That used to...maybe not 100, but it would require 80 percent, is what I should say. [LB336]

SENATOR SCHUMACHER: Yeah. The only underlining and striking I see is between 67 and 80. So... [LB336]

SENATOR HARR: Yeah. Yeah, and I apologize. I think it is 80, yes. [LB336]

SENATOR SCHUMACHER: All right. What can the 67 percent do that they couldn't do before? [LB336]

SENATOR HARR: And it's laid out on page 6. If you want, you can read along with me but...and there's someone that's coming after me that can go into this better... [LB336]

SENATOR SCHUMACHER: Maybe let's, you know, let's do that instead. [LB336]

SENATOR HARR: Let's do that. And I appreciate that. [LB336]

SENATOR SCHEER: Senator Harr, in...I mean, I don't live in a condo association so I, you know, it's easy for me to say, but you're changing the 80 to the 67.5 percent. It's not that big of difference so why are we looking at this? What is...and maybe I need to ask the next testifier... [LB336]

SENATOR HARR: Yeah. [LB336]

SENATOR SCHEER: ...that has happened that...which I consider a fairly small change in percentage of vote that has impacted something to where we would change statute? [LB336]

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SENATOR HARR: Yeah. So it still requires a supermajority, 67, which is a still a large portion. Before I'll call it a super supermajority of 80. And the problem you run into there, and it's running not just...you know, I mean, not just in Nebraska but across the country, is that you have a few shareholders that are causing problems. You know, when we...the Condominium Act is a uniform act. And it's...we kind of followed other states on the uniform act. And what we're finding is that that's what needs to be changed because it is allowing the vast majority of people who want something, they are not being allowed to and it stifles innovation and growth within the condominiums. [LB336]

SENATOR SCHEER: But if they bought the condominium, it had whatever rules and regulations that it was adhering to at the time. I mean, as a purchaser, that's my impression that I'm buying into. [LB336]

SENATOR HARR: Yeah. [LB336]

SENATOR SCHEER: And I also know that in the case of where you're trying to change something, it says there's got to be 80 percent. So maybe I bought the unit based on, you know, it can be over a majority that want to change it, but by God, if it gets to be 80 percent then I guess, you know, then I am out of luck. But I feel better with that than 67. So we've lowered the threshold a little better and, you know, I'm just concerned about that minority interest a little bit. [LB336]

SENATOR HARR: Yeah. And that's a valid, you know, concern. And this is a policy issue. You know, what percentage do we want to be able to control what happens in a condo association? You know, I...there...you know, you can belong to a co-op where one person can blackball anyone else in the unit, you know. You know, depending on what your condo unit, you probably can't do that, your condo agreement. But I think it's good public policy to make sure that a vast majority agree that this is what should be done, but where that we don't hold to that, you know, a super supermajority level. [LB336]

SENATOR SCHEER: Okay. Other questions? Yeah. Thank you. [LB336]

SENATOR HARR: Thank you. [LB336]

SENATOR SCHEER: First proponent for LB336. [LB336]

MARK HUNZEKER: (Exhibits 1 and 2) Mr. Chairman, members of the committee, I'm Mark Hunzeker. I'm a real estate lawyer and have been for 35 years. I represent developers,

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subdivisions. I've formed many homeowners associations and condominium regimes. When I started practicing law, there weren't very many condominium regimes. And I have to confess that in those days I probably didn't give sufficient thought to what might occur in the way of changes over the next 30 years after I had drafted those. But now I am having clients come to me who are either homeowners associations or condo associations or individual owners who want to make changes in those associations, and in the case of condominiums, there are a number of different rules that apply when it comes to an amendment. Some things, as Senator Harr pointed out, require no votes. Those are things that are very routine related to takings from eminent domain or adjustments of boundaries between adjacent units or relative to limited common elements that are shared by units. Others require different thresholds. The 80 percent threshold applies to two things: termination of the condominium, complete termination of the condominium regime, or the sale or mortgage of any portion of the common elements. The 100 percent requirement applies to any increase in or change in special declarant rights, changes of boundaries of any units, increasing the number of units, changes in allocated interests of any unit, or changes to the uses to which any unit is restricted. This bill would leave in place, as it relates to the 100 percent approval, the unanimous approval for any changes to special declarant rights which are there for the purpose of protecting against an unscrupulous developer. It would change to a 67 percent threshold the remaining portions of those items with the exception that it would still require the consent of any unit owner affected by the amendment. So to the extent that you own a unit whose boundaries are being changed, whose allocated interests are being increased, the uses are being changed, your consent is required under this bill to effect that change. But it reduces that threshold from an impossible 100 percent down to an at least attainable 67 percent, and I'll get to that in a minute. As to the 80 percent threshold, the bill would leave in place with the amendment that I've passed around the 80 percent threshold for termination, but would reduce to 67 percent the approval required to mortgage or convey any portion of the common elements. There are a lot of circumstances that give rise to a need for a condominium to amend its organizational documents and most of them are unforeseen at the time that a declaration is drafted. For example, over time a condominium can fall into disrepair or there may need to be a repurposing of an area from one type of common use to another. Senator Harr referred to the bowling alley. I think about an in-place movie theater, some of those kinds of uses which are really just dark at the moment, that need to be repurposed. Sometimes they need to be...they need to obtain financing to make those changes and a two-thirds majority is a threshold that is attainable. Eighty percent is very, very hard to do. Sixty-seven percent is a very high threshold of agreement for any group of more than three people. It's the veto override threshold. It's a level of consensus that is rarely reached among groups of people on any issue that is serious and even when their interests are aligned. I've had some recent experience with a homeowners association which I represented about 30 years ago when a developer created an acreage subdivision on the edge of Lincoln. That subdivision is now surrounded on three sides by the city limits. Its annexation is imminent. But when it was done, he created an area for a barn and a horse corral and created out-lots that ran through the subdivision abutting the lots to get to a horse trail that

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ran all the way through the subdivision. There hasn't been a horse in that barn for 15 years and there hasn't been anybody on those trails for the same amount of time. The directors decided it was a good idea to sell off the horse barn and corral to a developer who would develop it nearby and to sell the trails off to the abutting homeowners, keeping the money in the association to defray the cost of sewer and water when the inevitable annexation comes. When we first discussed that with the homeowners, it was virtually unanimous. There were one or two homeowners who really didn't think that it was necessary at this point, but it was virtually unanimous. It took us nearly two years to reach the 67 percent threshold to get that amendment done simply because it's just that hard to reach that kind of threshold. An 80 percent threshold is extraordinarily difficult and 100 percent is just impossible. So that's what we're really doing here, is trying to reach to a...reach a level which is the default amendment level in the entire statute while still retaining for people the essential veto of anything that adversely affects their unit. And I'd try to answer any questions you might have. [LB336]

SENATOR SCHEER: Senator Schumacher. [LB336]

SENATOR SCHUMACHER: Thank you, Senator Scheer. I'm trying to envision a situation where let's say there's a ten-story building and it...ten floors in it. And they decide to turn it into a condominium...turn it into a condominium, and each of the floors has got two condominiums. And so you have 20 condos in that particular building. Okay? And then I'm happy with that. I look at it and I figure, gee, it takes a pretty penny to buy half a floor of this building. There's going to be no neighbors that are going to be problems. I'm not going to trip over kids running up and down the hallway. The elevator is not going to be all marked up and graffitied from kids riding it because, you know, everybody in this building is going to be pretty well to do. Okay? And the way the change in the law, at least on page 2, for somebody to have taken that condo and taken neighbors on my floor and made three condos out of that part, thus I have four people living on my floor sharing my half and they each have a third of a condo, I've got the four; they're making noise doing just what I didn't want to have done when I bought into it. And under the change in the law, as long as the people who own the half that became the three agree, they can do that to me. And they can change the size of the boundaries of that other unit as long as that owner consents. They can allocate interest in that unit and they can change the uses to which it was restricted. I didn't want a day care in one of those units when I bought. So am I...what am I missing here? [LB336]

MARK HUNZEKER: Well, I think two things, Senator: One, under the current statute, if the declaration permits subdivision of units, that subdivision you described could occur as a matter of right with no vote. If it does not specifically permit subdivision of units, then it would require under the current statute 100 percent threshold for approval. Under what we're doing here, it would still require 67 percent. [LB336]

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SENATOR SCHUMACHER: But it wouldn't require my consent and... [LB336]

MARK HUNZEKER: It would require 67 percent of all 20 units that you described in your example, so 67 percent of the original 20 units would have to agree to make that change to divide that unit on your floor into three. [LB336]

SENATOR SCHUMACHER: That's not why I bought into the building and I was protected by a statute when I did so it would be unanimous and it wasn't in my declaration. I hired an expensive lawyer to say, I don't want any chance that the other half of this...my floor is going to become a day care with the...with three different condos subdivided. [LB336]

MARK HUNZEKER: May I just...I'd just suggest to you that it would still be a very tall task for that unit owner to get 67 percent of those 20 units to agree to allow him to divide his unit into three. It is very hard to do under the best of circumstances even when, as I described, the homeowners association, when all their interests are really aligned and everybody is in agreement, it's hard to get to that two-thirds. And I...again, there are always possibilities of people who are unhappy about changes to condominium regimes or to homeowners associations or other covenants, but the balance has to be between the ability to adopt those projects to changing circumstances versus someone who simply doesn't want any change for any reason and having that person have a complete veto power over the other 19 units in your example. [LB336]

SENATOR SCHUMACHER: But that was the deal that was made. [LB336]

MARK HUNZEKER: That was the original deal that was made although I would say to you that that deal was not set out in the declaration. It was not in any document that was given to the buyer of those units. It's in the statute. And I understand that maybe everybody is presumed to know what's in the statute, but very few people do. And very few people would have been relying on that 100 percent threshold when they read the document because they wouldn't have known it and it wouldn't have been in the document. Almost no documents that I'm aware of other than...well, almost no condominium documents that I've ever...certainly none that I've ever drafted set out all the statutory requirements for every possible consideration of amendment. It sets out a two-thirds requirement for amendments which are permissible. [LB336]

SENATOR SCHUMACHER: And it may reference the Condominium Act. [LB336]

MARK HUNZEKER: It will...of course it represents the act, sure. [LB336]

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SENATOR SCHUMACHER: And that's where this is...that's where this very expensive lawyer I hired to tell me it was unanimous consent got the idea from. [LB336]

MARK HUNZEKER: Well, on the other hand you may have a situation where that same unit happens to be a first floor unit in an area where it is no longer desirable to have a residential use on the first floor, but it is highly desirable to have some sort of commercial use. And to be able to make a change that would enable some sort of commercial use on that first floor, to say that that requires 100 percent of the first 20 unit owners in order for that unit to go from a vacant, residentially restricted unit to an operating commercial use is probably a pretty good trade off for the value of all the rest of those units. [LB336]

SENATOR SCHUMACHER: Except that I didn't want to walk past a bar when I walked in my house. I... [LB336]

MARK HUNZEKER: I understand. You're... [LB336]

SENATOR SCHEER: Thank you for your... [LB336]

MARK HUNZEKER: Right, sure. [LB336]

SENATOR SCHEER: Other comments? Senator Gloor. [LB336]

SENATOR GLOOR: Thank you, Chairman Scheer. And people should know, Mr. Hunzeker and I know each other from our younger, wilder years. So last year when this bill came up... [LB336]

MARK HUNZEKER: He was the wild one, by the way. (Laughter) [LB336]

SENATOR GLOOR: They can believe that. We talked about this a little bit last year and we've talked about it a little bit this year and I happen to also not only live in a condominium here, but I'm on the board of a condominium which has been my "go to school" about some of the challenges that we're talking about here. So I'll give you a couple of examples that relate to issues around our condominium association here. A jacuzzi that the insurer came to us and said, you need to make these changes or we're going to rack you with a little higher premium on your insurance within the condominium and that combined with the leaks we were having, we shut it down. But to take it out also then requires--because if we're going to take it out, we're going to take it out because we're going to use that room for something else--requires us to get people to vote. And I'm trying to...I don't remember anymore what the percentage is. But would this bill

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allow us to drop that number to 67 percent or will that spoke be specific to whatever our association required? [LB336]

MARK HUNZEKER: It may be specific to your association documents because many of the other changes that are allowed at 67 percent can require a higher threshold if the document...if the original declaration says it requires more. But a change from one common use to another probably doesn't require a vote as long as it's still a common element. What would require a vote of 80 percent or more under the current law, 67 percent under this bill, is a vote to be able to borrow some money to make that change. [LB336]

SENATOR GLOOR: About the sale, because one of the issues that's also come up has been the sale of parking spaces to people who would like to buy those parking spaces with that amount of property... [LB336]

MARK HUNZEKER: They're currently common elements? [LB336]

SENATOR GLOOR: They're currently common elements, yeah, and that would require... [LB336]

MARK HUNZEKER: That would require currently an 80 percent threshold. And under this bill, it would allow for a 67 percent threshold. [LB336]

SENATOR GLOOR: And we've had some discussions along these lines. Part of the challenge is...you know, an offset to some of the legitimate concerns Senator Schumacher has is there's a lot of absentee owners who own the condominium, but then rent it or lease it and choose not to want to authorize anything. And I'd like to tell you they have reasons; but for the most part, I think they're afraid that whatever happens is going to ultimately cost them more. Or they're not there, they don't quite understand what's happening and, all things being equal, they'd just as soon not give a thumbs up if they don't understand what the issue is. And, you know, I understand that, but it's problematic when you have absentee owners. And we're not a big condominium, but we're big enough so that there's a surprising number of people who don't live there or if they do live there, live there for a very small number of months out of the year and aren't very active in the place. So I see that as also one of the complications. [LB336]

MARK HUNZEKER: In my experience, it doesn't take a very large group to have sufficient disagreement to make this very hard. [LB336]

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SENATOR GLOOR: Or want to be...even if there's not disagreement, if you have the absentee owners it's just... [LB336]

MARK HUNZEKER: Or just plain reluctance to do anything, yes. [LB336]

SENATOR GLOOR: ...yeah, reluctance because they're not involved or engaged. [LB336]

MARK HUNZEKER: Right. [LB336]

SENATOR SCHEER: Any other questions? Thank you very much. [LB336]

MARK HUNZEKER: Thank you. [LB336]

SENATOR SCHEER: Any other proponents? [LB336]

TAM ALLAN: Chairman Scheer, members of the committee, my name is Tam Allan, T-a-m A-l-l-a-n, and I'm representing myself on this as I was unaware of this bill until this weekend where somebody just called up and asked my opinion as a condo owner. And also I'm a real estate attorney. I'm not involved up to this point in condominium development but actually, we're looking at a condominium in downtown Lincoln to do this. And it's, you know, it's been an education. It's been fascinating to me. A lot of the things have been discussed already and so I will limit my comments on that. It's the end of a long day. But, Chairman Scheer, some of your comments as...and also Senator Schumacher, as you know, you bought what you bought and that should be that way, I think those are excellent points. However, forever is a long time. And condos are, even though there's been condos around for, gosh, I don't know, many years in Nebraska--they have not been that many of them--a lot of them are coming up to a time that a lot of changes need to be made and the 100 percent threshold is incredibly onerous, is at...and what I have found in anything relating to real estate, when you need absolutely everybody to agree, it's not only...is whether it's a good thing or a bad thing, what you end up with in many circumstances is, I can equate it to, like, spiked strips in real estate where somebody will say, I'll go along but it's going to cost you. And that holds up the rights of individual condo owners and, you know, lots of things happen over the year. Codes change. Different other laws change. Things have fires. Things get destroyed. HVAC systems need to be expanded. And without 100 percent it is...my understanding of this is, without 100 percent consent of all the condo owners, that would be impossible. And so, sir, your...I think your point is an excellent one is, you know, this is what I bought. But it might be three or four owners down there that everybody is pretty much in agreement except for...Senator Gloor you bring up the point of an absentee owner or something like that that just might not be interested. You know, an example of a wonderful, great

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project that just opened in downtown Lincoln in the Railyard, 28 out of 32 of the apartments are not owner occupied. I mean, they're being used for different things and especially if you get investment groups that will own a unit. And again, unfortunately with 100 percent, you get the thing of, well, there might be a price in order to go along on that. So I would be happy to answer any questions, but I would...it seems reasonable as far as some of the changes being made in this bill. [LB336]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you very much. [LB336]

TAM ALLAN: Thank you. [LB336]

SENATOR SCHEER: Are there any other proponents? Any opponents? Any in a neutral capacity? Seeing none, Senator Harr waives his closing and that is the end of LB336. Thank you very much and that's the end for today. Thank you all. [LB336]